REFORMING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: RECOMMENDATIONS FROM THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JULY 10, 2002

Serial No. 107-70

Printed for the use of the Committee on Education and the Workforce

82-596 pdf

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (866) 512-1800; DC area (202) 512-1800
FAX: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN A. BOEHNER, Ohio, *Chairman*

THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
CASS BALLENGER, North Carolina
PETER HOEKSTRA, Michigan
HOWARD P. "BUCK" McKEON, California
MICHAEL N. CASTLE, Delaware
SAM JOHNSON, Texas
JAMES C. GREENWOOD, Pennsylvania
LINDSEY O. GRAHAM, South Carolina
MARK E. SOUDER, Indiana
CHARLIE W. NORWOOD, JR., Georgia
BOB SCHAFFER, Colorado
FRED UPTON, Michigan
VAN HILLEARY, Tennessee
VERNON J. EHLERS, Michigan
THOMAS G. TANCREDO, Colorado
JIM DeMINT, South Carolina
JOHNNY ISAKSON, Georgia
BOB GOODLATTE, Virginia
JUDY BIGGERT, Illinois
TODD RUSSELL PLATTS, Pennsylvania
PATRICK J. TIBERI, Ohio
RIC KELLER, Florida
TOM OSBORNE, Nebraska
JOHN ABNEY CULBERSON, Texas
JOE WILSON, South Carolina

GEORGE MILLER, California
DALE E. KILDEE, Michigan
MAJOR R. OWENS, New York
DONALD M. PAYNE, New Jersey
PATSY T. MINK, Hawaii
ROBERT E. ANDREWS, New Jersey
TIM ROEMER, Indiana
ROBERT C. "BOBBY" SCOTT, Virginia
LYNN C. WOOLSEY, California
LYNN N. RIVERS, Michigan
RUBEN HINOJOSA, Texas
CAROLYN McCARTHY, New York
JOHN F. TIERNEY, Massachusetts
RON KIND, Wisconsin
LORETTA SANCHEZ, California
HAROLD E. FORD, JR., Tennessee
DENNIS KUCINICH, Ohio
DAVID WU, Oregon
RUSH D. HOLT, New Jersey
HILDA L. SOLIS, California
SUSAN DAVIS, California
BETTY McCOLLUM, Minnesota

Paula Nowakowski, Chief of Staff
John Lawrence, Minority Staff Director

TABLE OF CONTENTS

TABLE OF CONTENTS.....iii

OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.....2

OPENING STATEMENT OF RANKING MINORITY MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 4

OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.....5

OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 7

STATEMENT OF TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION; ACCOMPANIED BY TODD JONES, EXECUTIVE DIRECTOR.....8

APPENDIX A -- WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 45

APPENDIX B -- WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.....49

APPENDIX C -- WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. . 57

APPENDIX D -- WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.....61

APPENDIX E -- WRITTEN STATEMENT OF TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION; ACCOMPANIED BY TODD JONES, EXECUTIVE DIRECTOR 65

APPENDIX F – WRITTEN STATEMENT OF THE HONORABLE DENNIS KUCINICH, SUBMITTED FOR THE RECORD, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 73

APPENDIX G – QUESTIONS FROM REPRESENTATIVE RUSH HOLT TO THE HONORABLE TERRY BRANSTAND, SUBMITTED FOR THE RECORD BY REPRESENTATIVE RUSH HOLT, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENATIVES, WASHINGTON, D.C. 77

APPENDIX H - SUBMITTED FOR THE RECORD, WRITTEN STATEMENT OF THE NATIONAL CENTER FOR HOME EDUCATION, WASHINGTON, D.C. 83

APPENDIX I - DOCUMENTS SUBMITTED FOR THE RECORD, WRITTEN TESTIMONY SUBMITTED DURING A ROUNDTABLE DISCUSSION HELD IN CENTENNIAL, COLORADO ON JULY 1, 2002 ON "REFORMING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT IS NECESSARY AND POSSIBLE." 87

Table of Indexes 111

HEARING ON REFORMING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: RECOMMENDATIONS FROM THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION

WENDNESDAY, JULY 10, 2002

U.S. HOUSE OF REPRESENATIVES

COMMITTEE ON EDUCATION AND THE WORKFORCE

WASHINGTON, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in Room 2175, Rayburn House Office Building, Hon. John H. Boehner [chairman of the committee] presiding.

Present: Representatives Boehner, Petri, Ballenger, Hoekstra, McKeon, Castle, Schaffer, Tancredo, Isakson, Platts, Osborne, Miller, Kildee, Owens, Payne, Roemer, Scott, Woolsey, Rivers, McCarthy, Tierney, Kind, Kucinich, Wu, Holt, Solis, and Davis.

Staff present: Alexis Callin, Communications Staff Assistant; Scott Galupo, Communications Specialist; Kate Gorton, Professional Saff Member; Charles Hokanson, Professional Staff Member; Sally Lovejoy, Education/Human Resources Policy Director; Patrick Lyden, Professional Staff Member; Doug Mesecar, Professional Staff Member; Maria Miller, Communication Coordinator; Deborah Samantar, Communication Clerk/Intern Coordinator; Dave Schnittger, Communications Director; Jo-Marie St. Martin, General Counsel; Elisabeth Wheel, Legislative Assistant; Denise Forte, Minority Legislative Associate; Ruth Friedman, Minority Legislative Associate; Maggie McDow, Minority Legislative Associate; Alex Nock, Minority Legislative Associate; Joe Novotny, Minority Staff Assistant; and Suzanne Palmer, Minority Legislative Associate.

OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Chairman Boehner. A quorum being present, the Committee on Education and the Workforce will come to order. Let me say good morning to all of you. I am especially glad that we have Governor Branstad, the Chairman of the President's Commission on Excellence in Special Education, here with us today, and Todd Jones, the Commission's executive director.

Let me also say good morning to my good friend, Mr. Miller, the ranking Democrat, and all of my colleagues who are here today with us for this important hearing.

We are meeting today to hear testimony on the recommendations from the President's Commission on Excellence in Special Education. This is another in a series of hearings that we have done at both the subcommittee and the full committee level on how to reform IDEA.

We have one witness today, and I would like to welcome him to the Committee. Governor Branstad, as I mentioned, is the Chairman of the President's Commission on Excellence and Special Education.

Previously he served as Governor of the State of Iowa for four consecutive terms, where he made education the top priority in his administration and emphasized the need for all children in the state to receive the highest quality education, no matter what their ability and circumstances of birth. Governor Branstad has also served as Chairman of the National Governors Association, the Republican Governors Association and the Education Commission of the States. I want to thank him for being here today to discuss this important and timely matter.

Joining Governor Branstad at the witness table today is Todd Jones, the Commission's executive director. We are glad that he is here as well.

I'm going to limit the opening statements to the Chairman and the ranking minority member, and a designee from each side. If other members have written statements, they will be included in the record. With that, I ask unanimous consent that the record will remain open for 14 days to allow statements and other extraneous material mentioned during the hearing this morning to be in the official record.

Without objection, so ordered.

Since October of last year, this committee and the Subcommittee on Education Reform have conducted a series of hearings preparing for the reauthorization of the Individuals with Disabilities Education Act, a statute that has played an important role in ensuring that the doors of learning are open to millions of students with disabilities since it was originally passed in 1975.

During these hearings, we have heard from special education experts, education researchers and school finance experts; state, district and school administrators and officials; parents of children with special needs; and others with expertise in the field of special education.

At today's hearing, the sixth in this series, we will hear from the chairman of the President's Commission. As you know, the Commission's report, which was submitted to the President last week, is a welcome addition to the materials this committee will be reviewing in its examination of the special education system.

I applaud the Commission's emphasis on reducing the paperwork burden for teachers, improving academic results for children with special needs, and maximizing options for parents with such children.

This expert panel has soundly rejected the notion of turning special education into a new federal entitlement spending system, which would directly impede our efforts to reform the current system to address the growing concerns of teachers, parents, and most importantly, our children with special needs.

Despite the improvements made in 1997, major problems remain in the special education system, problems that money alone won't fix for teachers, parents, and children with these special needs.

Teachers, for example, want the special education paperwork burden reduced. Parents of students with special needs want better results and more options. Too many children, particularly minorities, are being wrongly placed in special education classes they don't belong in.

I think the Commission has done a great service for students with special needs as well as teachers and parents by soundly rejecting the notion that IDEA should be turned into a mandatory entitlement.

The Commission's report is filled with dozens of recommendations, and with many nuances. This committee should closely review this report to see how we can build on the reforms of the No Child Left Behind Act to improve the quality of education provided to children with special needs.

I know that we will approach this authorization with the same vigor, candor, and trust with which the members of this committee approached our work on the No Child Left Behind Act. We know children with special needs, their parents, and our schools deserve nothing less.

I would like now to yield to my friend and colleague, the ranking member from California, Mr. Miller.

WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX A

OPENING STATEMENT OF RANKING MINORITY MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Miller. Thank you, Mr. Chairman, and thank you for holding this hearing, and Governor, welcome to the Committee. I will be brief, because I want to make sure the Governor has sufficient time to answer the questions of members of the Committee and to explain the report.

I want to thank the Governor and the Commissioners for the work that they have put into this effort over the last eight months. They have held almost 20 days of public meetings and 109 formal witnesses, and 175 individuals providing public testimony, 5,000 pages of transcript.

I must say that my initial conclusion is that this report is somewhat thin and I think somewhat vague with respect to providing a restatement of - if that was the intent - what should be done with respect to IDEA or providing a blueprint for this committee.

I will be interested in hearing both a further expansion and the discussion of the idea of vouchers, because the report does mention that procedural safeguards and due process should follow, but our experience is that that has not been the case, and I don't know that that's necessarily the position that I understood the administration to have.

And also I think we need to have an expansion of the discussion of full funding, of mandatory spending, and the suggestion somehow that full funding is somewhat different than we have been working on over the last 30 years, and the commitments that this and every Congress on a bipartisan basis have made to the public, to the parents, and to the school districts.

It may be that that number differs, but until such time as that is established, I don't think that we should now be backtracking on the commitment that we have made, and I look forward to a discussion on that matter.

I think, as currently presented in the report, it sort of defies what we're hearing from parents and from school administrators and from teachers and others. Somehow the suggestion I guess is that the money alone won't cure some of the problems that we have identified, the Commission has identified, and others have, and we understand that.

This committee, under Mr. Boehner's leadership, has been committed to reform and resources going hand-in-hand, but I think the notion that somehow now with the reforms taking place that the full funding as it is generally understood within the education community, and within the IDEA community, is somewhat troublesome.

I say that because I'm a little worried that we are getting into a scenario of bait and switch here. We went through massive, drastic reforms in Leave No Child Behind, and then the following year, the funding disappeared. I think that tells us something, that there is a lesson or there is certainly - well, there is a lesson to be learned and there is concern to be had, and to now suggest that we would not make an effort to make this a mandatory spending is very troublesome in light of

that record.

So I thank the Commission for their work, but I am troubled by some of the vagueness of the recommendations and also the direction of some of the recommendations in terms of fundamental principles of the Act.

We all desire to reduce paperwork, but I think we also know from so many parents who have engaged this system that if you don't write it down, it doesn't get done, and it's got to be written down somewhere to provide for the protections of these children and for their full educational opportunity.

Thank you, Mr. Chairman.

WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX B

Chairman Boehner. The Chair recognizes the chairman of the subcommittee on education reform, Mr. Castle.

OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Castle. Thank you, Mr. Chairman. I also want to extend a warm welcome to the former Governor of Iowa and Chairman of the President's Commission on Excellence in Special Education, Terry Branstad.

Years ago, I witnessed Terry's commitment to education when he worked with former President Bush to convene our nation's governors for the historic 1989 summit. Today, I am glad, but not at all surprised, to see that Terry is still working to make a quality education available to all Americans.

When Terry and I were at the summit dinner in Charlottesville, our tent overlooked the academic village founded by Thomas Jefferson, where it was said that students could look out to the horizon poised between their education and their future, between what they are and what they would become.

Today, despite progress in classrooms around this country, children with disabilities are not completing school or performing at levels near their non-disabled peers. Their dreams for the future are often beyond their reach and below our expectations. For this reason, I am especially

pleased that your recommendations seek to make accountability for results just as important for children with disabilities as for any other kids.

I also want to commend you for your focus on early identification and intervention. As you mention in your findings, more than half of the children in special education programs have specific learning disabilities. Yet, unlike many severe physical and mental disabilities, some are identified because they have failed to learn fundamental skills like reading.

Other children, who have real, intractable learning disabilities, may not be identified until they fail for several years. In either case, it is clear that we must do more to identify young children who may be developmentally delayed and provide the necessary assistance to help them succeed.

Finally, I must admit that I am a bit disappointed that the discussion on the Commission's recommendations has focused so much on the mandatory versus discretionary funding issue. In my subcommittee's hearings, and in discussions with parents, teachers, and school officials in Delaware and across the country, it is clear that our current policies do not always deliver the education our children deserve.

While funding is an important discussion, it is not the only topic for discussion and it is my hope that we can come together to do what's right for our children with disabilities.

Thank you, Terry, for your hard work on this report. Your findings and recommendations bring a fresh perspective about special education and it will complement our efforts as we move forward with the reauthorization of IDEA.

Your commissioners, your staff, and especially Todd Jones, who is with you, your executive director, have much to celebrate. We appreciate it.

I yield back, Mr. Chairman.

WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX C

Chairman Boehner. The Chair recognizes the ranking member of the subcommittee on education reform, Mr. Kildee.

OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Kildee. Thank you, Mr. Chairman. I want to join my colleagues in welcoming Governor Branstad to the committee today. I thank you for your work over the past few months on the Commission and on this report.

The Commission's report has provided us with some recommendations that are worthy of further discussion. These include ensuring children with disabilities are truly included in state and local accountability systems, that's a very important recommendation.

These also include ensuring interventions are available for children who are struggling academically but not yet identified for special education. Unfortunately, I too must join my ranking member in expressing disappointment over much of the remaining substance of the Commission's report.

The report's focus on private school vouchers is divisive. The Commission's opposition to mandatory funding for IDEA and its desire to lower the federal share of excess cost is extremely troubling to me.

With the increasing demands faced by local school districts and tightening state budgets, now is not the time to back away from the additional resources for IDEA.

I am also dismayed that the Commission chose not to address problems that school districts have encountered in receiving reimbursement from Medicaid. School districts all across the country should be provided with assistance from the Department and the Center for Medicare and Medicaid Services in obtaining reimbursement for legitimate health and administrative expenses.

While the Commission's report includes statutory and regulatory recommendations, I believe our most important work could be done in the area of implementation. Too many students with disabilities have yet to see the full benefit of IDEA.

In large part, this is not due to statutory or regulatory problems, but a lack of effective implementation and enforcement. Parents continue to be our top cops to ensuring children with disabilities receive services. This isn't fair. Our efforts, this Congress should not be to focus on simply change for change sake, rather we should encourage a fuller implementation of this statute and its guarantees for children with disabilities.

Chairman Castle and I have had subcommittee hearings, which covered many of the ideas embodied in the Commission's report. These hearings have shown that there are many aspects on which we can work together.

Thank you, Mr. Chairman; I yield back the balance of my time.

WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX D

Chairman Boehner. Before I go to Governor Branstad, let me recognize the gentleman from Colorado, Mr. Tancredo.

Mr. Tancredo. Mr. Chairman, I ask unanimous consent that documents I received during a forum held in my district entitled Reform of the Individuals with Disabilities Education Act Is Necessary and Possible be included in the hearing record.

Copies of the documents have been provided to my Democratic colleagues. Mr. Chairman?

Mr. Miller. Reserving the right to object, and I do so without prejudice, but until such time as we have had an opportunity to review the documents, since there is no presence at the hearing, I do object.

Chairman Boehner. The objection is heard, but do we have an agreement that upon review of the documents, if there is an agreement, that they will be included in the record?

Mr. Miller. Yes, if that's the case, yes.

Chairman Boehner. Okay.

Mr. Miller. Thank you.

Chairman Boehner. With that, Governor Branstad, we are glad that you are here. You may begin.

STATEMENT OF TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION; ACCOMPANIED BY TODD JONES, EXECUTIVE DIRECTOR

Mr. Branstad. Good morning. Thank you very much, Chairman Boehner, and Congressman Miller, and other members of the committee, especially Congressman and former Governor Castle, and Congressman Kildee and others members of the committee. It is a neat opportunity for me to

have this chance to testify before your committee today.

I was honored to be asked by the President to chair this Presidential Commission on Excellence in Special Education and we had a very diverse bipartisan group of citizens that worked diligently on the Commission.

I am pleased to report that the President's Commission on Excellence in Special Education has finished its work. The Commission met its July 1 deadline for transmitting its report to President Bush. This morning I will outline the Commission's major findings and recommendations. Although the report is long and detailed - it's about 88 pages long - I will just hit the highlights.

On October 2, 2001, President Bush ordered the creation of the Commission. In his executive order, he made the following statement, and I quote, ``The education of all children, regardless of background or disability, while chiefly a state and local responsibility, must always be a national priority. One of the most important goals of my administration is to support states and local communities in creating and maintaining a system of public education where no child is left behind. Unfortunately, among those at greatest risk of being left behind are children with disabilities."

The President charged the Commission with studying issues related to federal, state and local special education programs in order to improve the educational performance of students with disabilities.

The Commission's effort represented the most expansive review of special education in the 27-year history of the Individuals with Disabilities Education Act. The 24-member Commission held 13 open hearings and meetings across the country.

At these meetings and hearings, we heard from 109 expert witnesses and more than 175 parents, teachers, students with disabilities, and members of the public. Hundreds of other individuals provided the Commission with letters, written statements, and research.

I want to give you a brief summary of the findings.

Finding 1, IDEA is generally providing basic legal safeguards and access for children with disabilities. However, the current system often places process above results, and bureaucratic compliance above student achievement, excellence, and outcomes.

The system is driven by complex regulations, excessive paperwork, and ever-increasing administrative demands at all levels for the child, the parent, the local education agency, and the state education agency. Too often, simply qualifying for special education becomes an end-point, not a gateway for more effective instruction and strong intervention.

Finding 2, the current system uses an antiquated model that waits for a child to fail, instead of a model based on prevention and intervention. Too little emphasis is put on prevention, early and accurate identification of learning and behavioral problems, and aggressive intervention using

research-based approaches.

This means students with disabilities don't get help early when that help can be most effective. Special education should be for those who do not respond to strong and appropriate instruction and methods provided in general education.

Finding 3, children placed in special education are general education children first. Despite this basic fact, educators and policy-makers think about the two systems as separate and tally the cost of special education as a separate program, not as additional services with resultant add-on expenses.

In such a system, children with disabilities are often treated, not as children who are members of general education and whose special instructional needs can be met with scientifically-based approaches, but they are considered separately with unique costs. This creates incentives for mis-identification and academic isolation and prevents the pooling of all available resources to aid learning.

General education and special education share responsibilities for children with disabilities. They are not separate at any level - cost, instruction, or even identification.

Finding 4, when a child fails to make progress in special education, parents don't have adequate options and have little recourse. Parents have their child's best interests in mind, but they often do not feel they are empowered when the system fails them.

Finding 5, the culture of compliance has often developed from the pressures of litigation, diverting much energy of the public schools' first mission to educate every child.

Finding 6, many of the current methods of identifying children with disabilities lack validity. As a result, thousands of children are mis-identified every year, while many others are not identified early enough or at all. I am proud to say that my state of Iowa is the only state so far that has abandoned the idea of IQ discrepancy tests.

We did it five years ago. The researchers recommend that this be eliminated in all states. It is a costly and unworkable approach, but yet it is still being used in most of the states for identifying eligibility for special education.

Finding 7, children with disabilities require highly qualified teachers. Teachers, parents, and education officials desire better preparation, support, and professional development related to the needs of serving these children. Many educators wish they had better preparation before entering the classrooms as well as better tools for identifying needs early and accurately.

Finding 8, research on special education needs enhanced rigor and the long-term coordination necessary to support the needs of children, educators and parents. In addition, the current system does not always embrace or implement evidence-based practices once established.

Finding 9, the focus on compliance and bureaucratic imperatives in the current system, instead of academic achievement and social outcomes, fails too many children with disabilities. Too few students with disabilities successfully graduate from high school or transition to full employment and post-secondary opportunities despite provisions in IDEA providing for transition services.

Parents want an education system that is results-oriented and focused on the child's needs in school and beyond.

Summary of major recommendations, in response to these findings**,** the Commission has produced a report entitled A New Era: Revitalizing Special Education for Children and Their Families. This report contains dozens of recommendations addressing each of the Commission's nine major findings and ramifications.

Overall, federal, state and local education reform must extend to special education classrooms. What we discovered was that the central theme of No Child Left Behind Act of 2001 must become the driving force behind IDEA reauthorization.

In short, we must insist on high academic standards and excellence, press for accountability for results at all levels, ensure yearly progress, empower and trust parents, support and enhance teacher quality, and encourage educational reforms based on scientifically rigorous research.

In addition, we must emphasize identification and assessment methods that prevent disabilities and identify needs early and accurately, as well as implementing scientifically based instructional practices.

Three broad recommendations form the foundation of the report. Major recommendation No. 1: focus on results, not on process.

IDEA must return to its educational mission: serving the needs of every child. While the law must retain the legal and procedural safeguards necessary to guarantee a free appropriate public education to children with disabilities, IDEA will only fulfill its intended mission if it raises its expectations for children and becomes result-oriented, rather than being driven by process, litigation, regulation, and confrontation. In short, the system must be judged by the opportunities it gives and the outcomes achieved by each child.

Major recommendation 2: embrace a model of prevention rather than a model of failure. The current model guiding special education focuses on waiting for a child to fail, not on early intervention to prevent failure.

Reforms must move the system toward early identification and swift intervention, using scientifically based instruction and teaching methods. This will require changes in the nation's elementary and secondary schools, as well as reforms in teacher preparation, recruitment and support. I would say not only teachers, but also administrators preparation, recruitment and support.

Major recommendation 3: consider children with disabilities as general education children first. Special education and general education are treated as separate systems, but in fact share responsibility for the child with disabilities.

In instruction, the system must work together to provide effective teaching and ensure that those with additional needs benefit from strong teaching and instructional methods that should be offered to a child through general education.

Special education should not be treated as a separate cost system, and evaluations of spending must be based on all of the expenditures for the child, including the funds from general education.

Funding arrangements should not create an incentive for special education identification or become an option for isolating children with learning and behavior problems. Each special education need must be met using a school's comprehensive resources, not by relegating students to a separate funded program or housed in a separate temporary building or something else that isolates the child. Flexibility in the use of all educational funds, including those provided for IDEA, is essential.

I just hit the high points, and I'm going to stop here because I know you have many questions. Thank you.

WRITTEN STATEMENT OF TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION; ACCOMPANIED BY TODD JONES, EXECUTIVE DIRECTOR – SEE APPENDIX E

Chairman Boehner. Governor, let me say thank you for coming today, and thank you for your report. As many of us have noted, the Commission has done good work on behalf of the President and this committee look forward to using much of the information that you have developed as we begin to consider the reauthorization of IDEA.

The Commission's report recommends that Congress create a unified system of services from birth through age 21. How does the Commission envision this seamless system working given that Part C of IDEA currently serves infants and toddlers, Section 619 separately provides services for preschoolers with special needs, and Part B serves school age children with special needs?

Mr. Branstad. Our concern is that instead of looking at these as separate silos, we need to break down the barriers and recognize that we need to look at it holistically in order to meet the needs of the child. I guess that also goes when we are talking about a special education child who is also a general education child first. We need to use all those resources and be able to coordinate that.

We did something in human services while I was Governor of Iowa called decategorization. This is a similar concept here. Instead of categorically looking at all these programs, look at the child and the child's needs. Try to use all the resources to meet their needs, and to try to make it as

seamless as possible.

That's what we're recommending, breaking down those barriers as much as they possibly can be.

Chairman Boehner. Governor, the report also goes on to say that we should get away from all of the dotting of the I's and crossing the T's, all of the bureaucracy, and begin to focus on results.

As we went through H.R. 1 last year, one of the goals was to focus on results and provide teachers, administrators, and others with much more flexibility in terms of how they get there.

Mr. Branstad. Yes.

Chairman Boehner. As a state legislator back in the mid-80's, I can recall wondering why we thought that we should outline everything a school should do from A to Z, through every grade level. Then we just accept the results because we have outlined all the steps they should take. We should instead begin to focus on the end product or the results that we wanted, and allow people to get there.

Now, having said that, changing from this model of us outlining every single step that needs to be taken in the bureaucracy, and focusing on results, what recommendations do you have in terms of moving us and providing the steps to go from the current model to a more results-oriented model?

Mr. Branstad. First of all, Mr. Chairman, we commend you and the committee, the Senate, and the President for working together in a bipartisan way on the Leave No Child Behind legislation. We think what you did there was an important and significant first step, and this should be coordinated.

We're saying special education children should also be included in the accountability system that you designed in that legislation. Congressman Castle mentioned in the introduction that he and I both participated in the Presidential summit on education and that was really the very beginning of setting national goals for education and trying to focus more on results, and less on process or inputs.

We believe that's critically important, and frankly we heard from a lot of parents who are very frustrated about the over-emphasis on process. I understand the importance of protecting civil rights, but we want to see more of the focus on what is in the best interest of the child, and how can each child be challenged to achieve their highest level of potential.

Chairman Boehner. We know that many children get missed early on. We know that many children are identified incorrectly, especially minorities. The Commission's report notes that we need to do a better job of training teachers and administrators to detect problems early on, and spend more effort in prevention.

My question is what type of incentives can we provide so that the training does in fact happen, and the identification of any potential problems with each child be detected as early as possible?

Mr. Branstad. That's a very good question, and I don't know that I have a great answer for that. I think that that really goes to the schools of education. We speak not just to what the administration needs to do in the Department of Ed, or what the Congress needs to do in the legislation, but we also speak to the needs to reform and change the teacher preparation process. There are a lot of teachers out there and I am just shocked to hear how many teachers feel ill prepared to deal with special education children in their classrooms.

So there's a lot of work that needs to be done with existing teachers to upgrade and improve their skills in identifying and working with special ed kids, and also in the general preparation. In fact, I made the effort to go up and visit the University of Northern Iowa special ed faculty in my state to learn as much as I could from them and some of the new methods and ideas that are coming out.

We also think that there is some great research that needs to be incorporated into the teaching methods in the colleges and universities throughout the country. We had one of our public hearings at Peabody College in Nashville, at Venable University in Nashville, where we heard from some outstanding researchers about some of the work that's going on there.

One of the things that we came across, and I mentioned this briefly in my remarks, is the need to eliminate IQ discrepancy tests that are used in so many states. There is not real validity to them. The efficacy of it is just not shown in the research.

We in the State of Iowa have had five years of experience in eliminating that, and instead putting those resources towards serving the needs of the kids. It's a better use of the resource.

Chairman Boehner. I appreciate that the teacher colleges need to do a better job, but in the meantime, we have real children in real classrooms with real needs. I think from this committee's standpoint, we need to find a way to address this need much more quickly than waiting for those institutions to begin to change their process.

Mr. Branstad. I think you're right about that, and I think Todd Jones has got some comments about that.

Mr. Jones. There are a couple of methods that the committee can look at that. One is how Part B funds are used, and permitting Part B funds to train general ed teachers in how to address the needs of special education children is an important way to do that.

Most referrals and identifications come from general education teachers, not from special education teachers initially.

Another way to look at it is how Part D, the research and national activity funds, are used and to focus funds on bringing that knowledge to those teachers as opposed to strictly focusing it

on special education program professional development.

Mr. Branstad. Actually there are some really detailed recommendations on how that whole research process needs to be reformed and changed in the Department of Education, so it is more effective and so that the concepts get put into practice.

Chairman Boehner. Mr. Miller?

Mr. Miller. Thank you. Just to follow up on that part of the debate, there was a wonderful debate in the Washington Post yesterday about schools of education, teachers' proficiency, arguing whether you should teach more content or more pedagogy, and at the end, Paul Hill - I think he is from the University of Washington - said well, why don't we look at a lot of things that we're teaching that really are relevant to what teacher is doing in the classroom.

One of the things, and we keep stating it in the Higher Education Act, that they are supposed to pay attention to preparing teachers to deal with IDEA, and yet I met with a group of teachers in New York a couple of months ago who are absolutely incredulous that nobody had talked to them about what they were going to encounter in the classroom, so maybe we also have to think about that when the Higher Education Act comes up next year.

Mr. Branstad. I think you are absolutely right, Congressman. We heard that from teachers all over the country, so what you have heard is exactly what we have been hearing.

Mr. Miller. Let me ask a question here, and we have been around and we have discussed for almost as long as I have been in Congress this question of paperwork, of requirements, of inputs versus outputs, and it has been a subject of reauthorization.

In your report - I'm reading from page 17 which I think is the full report - it states that IEP should provide a guide to quality instruction and related services for children. IEP's must preserve basic civil rights and promote achievement. We find this is possible by reducing current excessive repetitious paperwork requirements. The Commission recommends IDEA statutory IEP requirements focusing on substantive education and developmental outcomes and results.

And in the failure to do that is met by the law. Whether we deal with inputs or outputs, and I think there is merit to the argument that the Commission is making and that many members have made, and groups have made, I don't know that you - I want to be clear that we are not leading people down a primrose path here.

In your next paragraph, you stated among the IEP provisions that would be replaced by measurable outcomes and results would be the obligation of the IEP's to include benchmarks and short-term objectives as an inclusion. IEP contributes greatly to the paperwork burden and bears no relationship to the non-linear reality of child's development. Members of the child's IEP team would or should agree on the length, and evaluate periods and criterions, judgments and so forth, which I think is a good idea.

But let's not pretend that there is not going to be paperwork because if those goals and objectives and outputs are not there to be measured, and to be determined, we are kind of back where we are today where a lot of IEP's are more fiction than fact, and in many instances, you know, the attitude sometimes is well then, sue us if you don't like it. I mean, let's not pretend like this is a one-way street where the litigation is all inspired by parents.

Very often with IEP's, the services aren't available, so you end up on a waiting list for services and your child is still continuing along the developmental line, and what's been stated in the IEP is not a reality.

So I guess can you reconcile those two paragraphs? Because clearly the first one I read is about a different set of inputs, if you will, and the second one is really about how you enforce and achieve those recommendations, as I read it.

Mr. Branstad. Yes, we think the IEP, the individual education plan needs to be tailored to meet the needs of the specific child, and what we're trying to say, and I think we recognize it, reducing paperwork is something that everybody wants, everybody talks about it, it is harder to do than it is to talk about it.

We recognize that there is still going to have to be a certain amount of paperwork involved. What concerns us is we heard from teachers and special ed teachers are spending typically five hours a week on paperwork and we think that's excessive.

Also, we are losing a lot of our best special ed teachers because they are just burned out because of all the paperwork and all the extra responsibilities that have been placed on them that takes them away from working with the children.

The focus here is to try to make sure that the content of the IEP is focused and that it is not just a boilerplate that is put together. A lot of that boilerplate language meets all the procedural requirements, but we need one that really does focus on this unique child's individual needs and is designed to develop some benchmarks on achieving, and what this child is expected to achieve in the next year.

Mr. Miller. That obviously being your answer, I think we are in somewhat agreement there. Let me ask you another question. On the question of vouchers, am I correct in reading your recommendation which is that the due process, the IEP requirements, the requirements of the least restrictive environment if you will, the other requirements, would follow that voucher and be enforceable? And who would enforce it if that were the case?

Mr. Branstad. Well, the Commission's discussion of school choice options is not to the detail of the nuts and bolts implementation. What it says is that as those states and localities choose to experiment with any form of choice, whether it be charters, intra-district transfers, or any sort of private service provision, that the considerations of IDEA funding and IDEA structures be brought into that, and that special ed not merely be an afterthought in how the program is constructed.

It might be easier to describe it first as to how it would work with charters, and then think how that extrapolates out. If you have a charter school -

Mr. Miller. A charter school is -

Mr. Branstad. They are public schools.

Mr. Miller. Right.

Mr. Branstad. But there are many charter schools, which are treated under charter laws for special ed purposes as being some foreign entity, and so transfers of children from general public schools to charter schools are difficult to manage.

Mr. Miller. But they are still under all the requirements of IDEA.

Mr. Branstad. Yes, they are.

Mr. Miller. They are public entities. What do you do when you have a non-public entity? Does the Commission envision that the due process and the other legal protections of IDEA are transferable with that financial grant?

Mr. Branstad. Presumably they would be. Those are the civil rights components to IDEA. The question isn't whether the child is moving over into another service setting, and that that's somehow sealed off from public education. The concept is a more collaborative one.

Think about today with Title 1 services. If a child is in a private school, the Title 1 services at times follow the child, and a collaborative relationship is set up between that private possibly parochial school, and the local education agency.

The same concept can exist through special ed. It just hasn't been explored.

Mr. Miller. But there are clear distinctions - and I'm running out of time - but there are clear distinctions between the legal requirements of Title 1 funding and the allocations of Title 1 funding in that setting, and the civil rights and due process protections of IDEA.

Mr. Branstad. Yes and no. In my other job as deputy assistant -

Mr. Miller. Yes, because one -

Mr. Branstad. - secretary for civil rights –

Mr. Miller. - one is clearly a different situation.

Mr. Branstad. No. The Title 1 funds carry with them other civil rights obligations that are enforced by the Office of Civil Rights.

Mr. Miller. No, no. This, whether we like the language or not, is about an individual entitlement for services that have been determined to be necessary for the progress, the educational and development progress of that child. It is not the entitlement that runs with Title 1, and the concern here is obviously that some schools have allowed parents to use vouchers. And I have two points: one, whether or not, the parents know about that, and two, whether or not there has been any enforcement of those civil rights/due process protections that are the absolute organizing principle for these children and their parents.

Mr. Miller. I think it was the intent of the Commission that there would be accountability.

Chairman Boehner. The gentleman's time has expired. The Chair recognizes the gentleman from Delaware, Mr. Castle.

Mr. Castle. Thank you, Mr. Chairman. Governor Branstad, I actually have some fairly specific questions, and one of them is in light of the recent reports of schools spending $50,000**,** $75,000, and $100,000. By the way, I saw $200,000 the other day spent on one high-need student. I appreciate your Commission's recommendations to allow and encourage the states to address the impact of the one-half of one percent to require extraordinary care. I am pleased that that number is as small as it is, but it's a significant dollar figure.

As you mentioned in your report, some states have already created an additional funding source to help schools which exceed the average for people cost, but in your recommendations you suggested IDEA should allow states to use unspent IDEA funds to help pay the costs of high need children.

I was curious about that recommendation. Did you hear testimony that states were not spending their federal IDEA funds? Did the Commission discuss other ways to help states, particularly those who are magnets for high cost students because of their ability to deliver our magnets, meet their financial obligations?

Mr. Branstad. I think Dr. Douglas Gill chaired that particular task force. He is from the State of Washington, and has considerable experience in this. Todd, can you maybe summarize the situation there, and why the Commission made that recommendation?

Mr. Jones. Yes, I can. Commissioner Gill, who chaired the finance task force, felt strongly about the issue, in part because he had seen it firsthand. As we went to our hearing on finance in Los Angeles, we heard testimony to the same end. That is that schools hold back a portion of funds from whatever pool they can over concern that at the end of a funding cycle - you can hold IDEA funds for 27 months under the Tidings Amendment - when money for everything else has been committed, in through the door walks a child whose needs require them to spend 60 or $100,000 a year.

That child must be served under the law, and under frankly the ethical obligations of that district. However, that cost remains real. The idea is to create alternatives to better manage the funding needs. Risk pools and safety nets were some of the ideas identified.

Mr. Castle. I think it is an important subject and one that we need to look at further too, but let me move on. Recently I met with some advocates who suggested that schools are missing out on what could be more than a billion dollars a year in Medicaid reimbursements for coordinating and providing medical services to special education students from low income families.

Obviously that's a lot of money to the Medicaid program, but it is not a lot of money to the Medicaid program, which is huge. However, it is a lot of money to the schools that must pay for these medical services.

Did your Commission consider ways to harmonize education and health laws in guidance to ensure the schools are in fact able to be reimbursed for medical services that are covered by Medicaid? And if not, and I realize you had a lot of territory to cover, why not?

Mr. Branstad. That is a very big and complicated subject, and the Commission does recommend better coordination. However, with the limited time frame we had, I think the feeling of the Commission was there just wasn't enough time to go into the kind of detail that needs to be in that area.

There is clearly a need for better coordination and this question also came up yesterday at the Senate hearing. So this is an issue that I think does need much more in-depth research, work, and better coordination between the HCVA's replacement, CMS, and the Department of Education.

Mr. Castle. Yes, I think you're right. I mean, these economic issues tend to be very significant when you start to deal with the people who are doing this on a day-to-day basis. For that reason, I think that issue is something we need to pay attention to as well.

Let me move on again to another question if I can get it in. I do appreciate and support your recommendation that state and local accountability systems should include all children consistent with No Child Left Behind.

As you know, that law requires annual reporting on the success of each school district in achieving its goals for students with disabilities. If they fail, it provides technical assistance and corrective actions.

In your recommendations, you state that IDEA should be revamped to require each of these things I just described. Is it your recommendation to recreate the accountability system that is currently in No Child Left Behind, and which already applies to children with disabilities in IDEA?

Mr. Branstad. What we're saying is that we need to make accommodations so that children with disabilities can participate in the accountability system that was part of the No Child Left Behind.

So we want it to be consistent with that. We also recognize that there may need to be some accommodations that have to be made so that children with disabilities can participate.

Mr. Castle. But it is not your goal to have it duplicative?

Mr. Branstad. No, it is that they should be part of the unified system of accountability, but recognizing the special needs of some children in special ed, there may need to be certain accommodations made so that they can participate.

That's what we're saying, not a separate, no, not at all. We want them to be part of the overall accountability system and part of No Child Left Behind.

Mr. Castle. Thank you. Thank you very much. I yield back to the Chair.

Chairman Boehner. The Chair recognizes the gentleman from Michigan, Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman. Governor, the Commission's report specifically questions whether or not the 40 percent full funding figure set by Congress in 1975 is the proper level of federal commitment to special education costs.

Would the Commission envision this figure to be higher than 40 percent or lower than 40 percent? And what was the justification for questioning that figure of 40 percent?

Mr. Branstad. I think I'm going to let Todd answer that, because I did not participate in that particular task force, and this was the area that Dr. Doug Gill chaired.

Mr. Kildee. Sure.

Mr. Jones. The issue isn't that the 40 percent of APPE is necessarily the right or wrong number; it is that it's an arbitrary number that's attempting to be a proxy for another number, and that is excess cost.

Since 1975, Congress has thought that APPE, average per pupil expenditure, was roughly one-half or the same as the excess cost. In other words, special ed students are twice as costly in total as a general ed student, and so the proxy for 40 percent of excess cost was average per pupil expenditure.

What the Commission has recommended is that Congress stop looking for a proxy and instead recommends that states and localities go for the real figure, and it is easily achieved. It can be developed based on guidelines that locals could develop, and it could well be that there is a need, once you look at what excess cost is, because very few people have an accurate representation of it; That the number needs to be more, or the figure needs to be more, that more money is put in, or it could be less.

It could be more for some students, 100 percent for the high cost children, for example, or it could be far less for children with less intensive needs, and that will be to the wisdom of Congress to give thought to once that number exists.

But the idea is to step away from the arbitrary number.

Mr. Kildee. No administration has asked for more, and all administrations have asked for less.

Mr. Branstad. I mean, I think this administration has increased the funding in recent years. It still has not achieved the goal that was set way back in 1975. As a former Governor, I know the frustration that a lot of Governors have feeling that that was an unfunded mandate or a promise that wasn't fulfilled.

But there has been, and we acknowledge that progress has been made in recent years due to the efforts of the Congress and the President.

Mr. Kildee. But at least 40 percent gave some mark, some measure to determine the federal commitment to IDEA. As I said, no administration has ever asked for more than 40 percent. We have never had to worry about that, about busting the budget. All of them have asked for less. I'm not sure why you felt this was so important that we question the 40 percent.

Mr. Jones. Let me give you a good example of why. Because the numbers are unconnected, there can be changes to how much special education costs that are totally unrelated to the average per pupil expenditure.

Let's say hypothetically that there became a means of helping the most severely disabled students that was exorbitantly expensive, and the true excess cost of special education became much more than it is today. The 40 percent figure remains the same. Local schools become short-changed.

On the flip side, there could be great growth in the general cost of education, maybe through technology that is totally unrelated to special ed costs. The Commission is saying to stop looking to a proxy that isn't related to excess cost, and use the relationship to excess cost.

The excess cost figure is no more related to APPE than it is to the number of children named Fred who are in special ed. They exist, but there is no relationship between the two.

Mr. Kildee. Let me ask you another question. The Center for Medicare and Medicaid Services, formerly called HCVA, and what we still call it, HCVA.

Mr. Branstad. I'm a little out of date on that, thank you.

Mr. Kildee. They are reviewing a restricted school-based Medicaid reimbursement policy. Why did the Commission not address what could be a shrinking of the available pool of funds for school districts?

Mr. Branstad. Congressman, I think it was more that this was a very large and complex area and you know, we had time constraints and we had a limited amount of time to address all these issues. I just think that particular subcommittee made the determination that they just didn't have the time to do justice to the kind of work that needs to be done there.

I think that clearly we did address it, saying there needs to be better coordination, but I hear your concerns. I think they are very well founded. That needs to be addressed, and I know that Medicaid is a huge issue that impacts not only a lot of citizens, but a lot of school districts. A lot of school districts are not satisfied with the way that's been coordinated. It has been very expensive and difficult to manage.

Mr. Kildee. You recognize that especially for some students, that's a very important source of funding.

Mr. Branstad. Yes.

Mr. Kildee. Thank you very much.

Mr. Branstad. Especially for low incidents, basically high cost students, this is a huge issue.

Mr. Kildee. Thank you, Governor. Thank you.

Chairman Boehner. The Chair recognizes the gentleman from Georgia, Mr. Isakson, for five minutes.

Mr. Isakson. Thank you, Mr. Chairman. Governor, welcome, we're glad to have you, and I commend you on the report.

I really want to talk about two things, or make one observation, first. I commend the Commission on identification of the three categories being sensory, developmental and physical, and neurological. I want to also complement you on the early identification.

It is my experience that through a lack of early identification effort, there are many children whose symptoms might appear to be a learning disability when they are in fact a correctable physical impairment in audiology or in sight.

I would like for you to address for one second your recommendation in giving flexibility to systems to move money for early identification, which I think probably is in the sensory area more than anything else.

Mr. Branstad. Yes, Congressman, we heard from some very distinguished researchers that felt that this is an area where we needed more flexibility and where early intervention could make a real difference in the lives of these kids.

So that was an area and Todd, maybe you can expand on that.

Mr. Jones. Part of what the Commission looked at is not only in the identification process where so many resources and efforts are tied up, but looking at how that process occurs. The recommendation to step away from the IQ discrepancy model means going for weeks of evaluation of a child where nothing is really going on except process, and instead looking at an intervention-based model where children are brought in because they appear to have a need. You seek to

remediate it, and those who are left over at the end unremediated are the ones who are identified because they still have need.

Mr. Branstad. Also in the area of early intervention in reading, the researchers testified before the Commission that with appropriate intervention early on, many of these kids can catch up to their peers, and don't have to go into special education.

Mr. Isakson. I would suggest that a better emphasis on kindergarten or first grade audiological testing and eyesight testing could go a long way towards identification of a physical problem that is correctable from a child that gets identified three years later as having a learning disability when they don't have one.

That's my main point, and I think it's money well-spent in the flexibility that we give those states to do that will be a help. It lessens the number of identifications that are inappropriate or misdiagnosed for some other reason, which raises the availability of funds for the children that really need it.

I have a second point and this may be an observation. As I read the report, when you got into the parental empowerment, and the question of choices for parents was addressed, and I think Mr. Miller was addressing that when he used the voucher award a minute ago, as I understood it, your recommendation was along the lines of No Child Left Behind where you have a measurable accountability system on the schools, and when there is a failure, that the parents be empowered with certain choices to address the need of the child.

Was I correct in reading that?

Mr. Branstad. Yes, Congressman, the intent was to be consistent with the No Child Left Behind approach, and also with giving the flexibility to the states where they have similar provisions.

Mr. Isakson. This is not a question, but an observation. I think this is really important to the children in need of help.

It would be a big mistake for us in Congress to take a ward-like voucher and abuse that ward in the context of the IDEA debate when as I understand it, what you have observed is that there are cases where an underserved child's parents should have the opportunity for that child to receive a better education which may include a transfer, or may include choices for that parent. This may or may not, at the discretion of state law and local education association, mean some form of public or maybe even private, or as you said, charter school assistance.

And I remind everybody as we address this, because this is really important, the Supreme Court ruled years ago that if a state or local education agency cannot meet the needs of an IDEA-identified child, regardless of the cost, that state shall provide that education. It is universally provided in a private setting, usually because of multiple severe physical handicaps.

Now, in the sense of the word, that would be a voucher mandated by the Courts, but in fact, it was a mandate by the Courts that that child had the right to an adequate education, and if the

system couldn't deliver it, the system had an obligation to provide it.

So the point I'm trying to make here is that if our systems are failing our children, we are failing our children not to have measurable assessments, the results of which can allow parents the ability to get that child into a setting where they do get the best possible education given their circumstances, and not just throw that concept out in a political debate for or against a term of choice, or vouchers.

So that's a statement, I wasn't asking you a question but I wanted to make sure I understood what the Commission was saying.

Mr. Branstad. I think your observation about the intent of the Commission is correct. I would also say that when we talked about the individual education plan, the IEP, we wanted to see that focused on outcomes so that the parents can have measurable things to look at, rather than just a bunch of inputs that really doesn't give them much guidance as to whether their child is making the kind of progress they believe the child should be making.

Mr. Isakson. Thank you.

Chairman Boehner. The chair recognizes the gentleman from Indiana, Mr. Roemer, for five minutes.

Mr. Roemer. Thank you, Mr. Chairman. With all due respect, Governor and Mr. Jones, I am reading through the report, and I can't help but feel a bit disappointed in you punting on, and kicking the can down the road on, the single most important question that we face in this whole debate on IDEA, and that is the requirement that we give every single child a free and appropriate education who has a disability.

That doesn't mean a free ride for the government, and appropriate only to those with disabilities that are not severe. It means free and appropriate to every single child in America that has this severe or limited disability.

And as I read through your executive summary, your summary of findings, your summary of major recommendations, that question is really not addressed.

It's almost like having a Commission on terrorism and not addressing the question of Al Qaeda. What we need, I think, is to have you more directly address this. Your major recommendations on the eighth page focus on results, not on process.

Well, it seems to me when you have quoted No Child Left Behind, that we have succeeded on No Child Left Behind because we attached focusing on results to attaching more resources to the achievement of better results and success. You don't say that anywhere in your major recommendation.

In fact, major recommendation 2 is embrace a model of prevention and intervention which would probably cost some resources, yet major recommendation No. 2, we don't have you

addressing that 40 percent question either.

You simply say we don't know if it is bigger or smaller, but Congress should decide that, in effect, and I just want to say, Governor, that when my constituents come up to me in town meetings and whether it is a mother or father of a child with a limited disability, dyslexia, or it is a child like Dominque at McKinley School that needs two therapists, full daycare, extreme disability problems, confined to a wheelchair all day, which cost more money, I'm not sure how we address this cost need to get up to the 40 percent with this report that you have given us.

Can you tell me why you haven't said let's get to at least the 40 percent, and that's a major finding of this report?

Mr. Branstad. Congressman, we know that the 40 percent issue is a big issue here, and we know that there's going to be a lot of debate and discussion about it in both the House and the Senate.

What we wanted to do, and we recommend or recognize that whatever the Commission does in this area is probably not going to have a lot of sway here, but what we wanted to do is to recommend some changes that we felt could make a real significant difference in the lives of kids.

We believe this early intervention and moving the process from where you have to fail before you are eligible, are things that can make a real difference in the lives of kids. Are they going to cost more or less? We think there will be some initial costs to the early intervention, but if that child doesn't have to spend their whole school years in special education because of the early intervention, it's actually going to save a lot more in the long term than it is going to cost in the short-term.

Mr. Roemer. But Governor, that's a very good answer to my question, to say that we would need at least the current cost of 40 percent then. Why not say in this report that Congress should meet its obligation under IDEA, Part B, that says that we are now providing about $1200 out of the estimated $7300 that it costs per pupil to educate these children across the country?

Mr. Branstad. The task force chaired by Dr. Douglas Gill basically addressed this issue, and I thought in some detail trying to identify one. We need to do a better job of helping school districts deal with that child with severe disabilities that is a very expensive one to deal with. I think there are some specific recommendations there that help to deal with that.

And then also -

Mr. Roemer. But Governor, not from the Federal Government. He recommends alternative resources or other resources there.

Mr. Branstad. Well, greater flexibility of federal resources as well as other resources, I believe.

Mr. Roemer. Well, that doesn't address the question of federal resources and our obligation to provide the 40 percent.

Mr. Jones. Mr. Roemer, it does say explicitly that there should be more money for Part B. The question you are raising is how much, and you're saying we're $1200 now, why not 40 percent?

Let's say 40 percent is $2800 a child, just to pull a number out of the air. It begs the question. What is the right number? Is it $2800? Is it $4,000? Is it $2,000? We don't know how much special education costs, and until the country comes to grips with what cost is, Congress has a difficult time saying what's the proper level of support.

And until you clarify that, the 40 percent becomes a moving target over time, and it's again, unrelated to the cost of special ed. That's why the Commission said to look back at what cost is, and then think about what spending should be.

Mr. Roemer. I just think that you should have helped us with that moving target, and at least help us get to the 40 percent.

Thank you, Mr. Chairman.

Mr. Castle. Thank you. Mr. Osborne?

Mr. Osborne. Thank you, Mr. Chairman, and thank you for being here, Governor. I tend to be a little bit practical in my approach and I commend you for your thought regarding being results-oriented, and so process-oriented. It sounds good, and yet I guess I'm concerned about what results are you looking for, who will determine those results, and what exactly would be measurable here because that's going to be a big issue.

Mr. Branstad. I think what we're looking for is academic achievement that is tailored to that individual student. The whole idea of an individual education plan, an IEP, is to have a plan that really is tailored to the needs of the child, and we want to make sure that we have benchmarks and ways to measure progress for that child.

Different children have the ability to learn at different rates. The goals are much different for those with severe handicaps than another child that might have some specific learning disabilities.

So we need to make sure that that IEP is developed in a coordinated cooperative manner. We heard some real concerns were where parents felt that it was cut and dried, and the decision was made before they ever got to an IEP meeting. We think that's wrong.

We think there needs to be a collaborative way where the parents are brought in early to get their input, and they participate fully in the process along with the teachers and the other specialists, and the administrators in that school, as well as the child themselves.

Mr. Osborne. So you are saying then that there should be some specific benchmarks over time that you try to assess.

Mr. Branstad. That's correct, and then there would be regular meetings where they would have an opportunity to collaboratively review the results and what kind of outcomes they are achieving, and it has different options that may want to be looked at.

Mr. Osborne. Okay. The second question I have that I think is a key point is your emphasis on early identification, and I think everyone realizes that's really critical.

Again, the question would be how do we accurately identify early because a child that has spent the first three years of its life sitting in front of a television set as opposed to a child that spends the first three years of its life being read to every night, having different academically-oriented toys and so on would maybe test very differently?

So are you talking about some type of a functional IQ test? I have had bad experiences.

Mr. Branstad. That's exactly what we're saying, we ought to eliminate those. What we are suggesting instead, we heard from a former principal of an intercity school in New York City that I think impressed the entire Commission meeting down in Coral Gables.

He talked about how in the pre-school meeting, he meets with the parents. He says these are the thing –he had a test of - was it 30 some different things that a child should know when they started school? So the child would be informed that they should know their colors and their address; they should know these basic things before they ever start school.

That was a way to put the parents on notice and explain that these are the things we expect the child to know when they start school. Then they worked right from the get-go in kindergarten, teaching these kids to read rather than waiting until first grade. There was a tremendous improvement in achievement that they had in the school that he led. He was a very good leader for the school.

It was very clear in communicating and working with the parents. Of course, it provided great support for his teachers and was able to attract really good teachers because they liked being part of a team that was achieving great things.

In a sense I thought that was an example of early intervention where the principal was working with the parent saying you know, this is what we are expecting your child to know when they start their first day of kindergarten, so be sure they are ready for it.

In some cases, they still wouldn't be, but at least they were on notice of what was expected and then the school would go to work and try to deal with the deficiencies that might exist from day one.

Mr. Osborne. Are you suggesting that there be some type of informal guidelines for identification? It sounds like what you're talking about is very individualized by school, and it is kind of a seat of the pants operation. Where one school might do a great job, another one might simply use an old test of some type. I would wonder if it would be wise if we had some type of fairly universal

approach in this early identification.

Mr. Branstad. I think what we're saying is to look at the best practices. We need to get the word out on those best practices so they can be copied and used elsewhere. I thought the example of what he was doing was a great example and one that I would like to see schools use throughout the country.

Mr. Jones. Frankly, the researchers that we heard from, and whether it be Dr. Jack Fletcher from U.T. Houston who was on our Commission, Sharon Vaughn, or a series of researchers discussing how there are ways to effectively identify early on with very short-term and easy to use tests - and I will use that for the lack of a better word - that take a minute or two or five to identify which children are at risk of having a disability, and those are the ones to initially focus on with interventions.

At the end of those series of interventions, you have children left over and those are the ones who are going to need services, children with disabilities.

Mr. Osborne. Thank you, Mr. Chairman.

Chairman Boehner. The gentleman's time has expired. The chair recognizes the gentle lady from California, Ms. Solis, for five minutes.

Ms. Solis. Thank you. Thank you, Mr. Chairman, and welcome, Governor. In reading over the Commission's report, I note that there seems to be an absence of discussion regarding limited English population, those that are English language learners.

In a state like mine in California where you have one-third of the population that are considered LEP - limited English proficient - why was this not brought up in your report or addressed in some manner?

And I ask the question because how can you assess a child if their first language is not English?

Mr. Jones. Actually, the Commission did address it in the issue of culturally sensitive evaluation materials. That goes beyond simply the issue of LEP children, but also goes to children who come from different cultural backgrounds, or children who, while not necessarily of limited are not native speakers of another tongue, but still have limited proficiency in English that is of use to them in school.

There is a discussion of that, that materials do need to be culturally sensitive. That still goes to the broader question of then what the service delivery issue is. So that's how the Commission addressed it.

Materials need to meet that initial threshold before being used.

Ms. Solis. What about professional training, teacher training and use of, for example, para-professionals?

Mr. Jones. Actually para-professionals weren't discussed precisely, but in fact, there is an entire page at the end, I believe it is of the professional development section, which discusses the need to have professionals in schools at all levels that are from diverse populations.

Ms. Solis. But nothing specifically about the usage of para-professionals, which I think in some cases, in some of my school districts, is being used now, and actually helps to augment the assistance of the instruction that's going on, because for example, if you go into a classroom and there is a lab, and students are in wheelchairs and they are performing on a computer, you have one instructor, and maybe you have a para-professional in there assisting these different children on their need to learn how to use that computer, or whatever the topic might be.

I would hope that that would be something that would be looked at, or somehow encouraged, and then also funding for that, funding for development in those areas so that not only teachers and administrators get the kind of staff development and training that's needed there, but also at the bottom rung, and going up.

Mr. Branstad. The Individuals With Disabilities Education Act does address the need for para-professionals and I think your point is a good one. There needs to be training for those people as well as for the teachers and administrators in dealing with children with disabilities in the classrooms.

Historically, that training is not. It's not just the initial training, but it is also the staff development that needs to be on an on-going basis.

Ms. Solis. Right. And I think earlier one of our colleagues on the other side brought up the issue of providing sufficient testing so that students that are found to have maybe health care needs, for example, with hearing impairment or eyesight -

Mr. Branstad. Yes.

Ms. Solis. I know in my many cases minority students, because of lack of access to adequate health care, their parents don't have health insurance, that kids are misdiagnosed. That happens to a high proportion of minority populations, and how do we begin to address that so that there is some standards set that students beyond kindergarten, because in some cases, not all students are even able to get into the kindergarten class, they start at the first grade and they are already behind in learning.

By the time they get maybe tested at the third grade, they are already set aside as an IDEA student, and I would hope that there would be more resources, in particular Medicaid or the SCHIP program and other kinds of innovative ways of getting resources in to those schools so that students can be adequately assessed, and appropriately assessed.

Mr. Branstad. Early intervention is one of our very strong recommendations. Early intervention is taking specific action to help kids at an early stage, as opposed to this concept of waiting for them to fail. That's why we want to eliminate the IQ discrepancy tests. Waiting until they fail that before they are eligible for funding doesn't make any sense.

It is much better to work early on with them and identify that problem and maybe deal with it in an effective way where they don't end up in special education. So the money spent on early intervention actually saves money for years down the road.

Ms. Solis. Just a last point would be that when you talk about staff development, do you see that there might be a need to increase the number of bilingual teachers that could be trained into these careers as well?

Mr. Branstad. Yes. And we are also losing a lot of teachers because of the high paperwork and the demands. We are losing a lot of teachers that have special ed training that are leaving special education because the demands of it are more than they want.

I happen to have a daughter that lives in California that is getting her training to be an elementary teacher, so I have a keen interest in this that I get from her perspective, and she has been doing substitute teaching and getting her teaching credentials. I've gotten some firsthand information from her about the experience she has had in dealing with the diverse population that you mention in your area.

Ms. Solis. Thank you.

Chairman Boehner. The Chair recognizes the gentleman from Wisconsin, Mr. Petri.

Mr. Petri. Thank you. Thank you for your work on this report. You are dealing with special education generally, but do you have any recommendations as to different treatment from the federal level for people who are severely developmentally disabled - Down Syndrome and the like - as opposed to people who are learning disabled, which means they are not performing to grade?

It seems to me that there is a fundamental difference there, and secondly, we have a problem in the architecture of any of these problems in that if you are administering, whether it is a hospital or a school, and you can get money by categorizing people as eligible for more federal funds, you don't have much incentive to stop categorizing them.

So is there a success rate? We are spending extra money on people who are learning disabled. Are they then no longer categorized as learning disabled? If they aren't, why should we be spending the money if we are not achieving any results? How can we design it to actually get kids up to grade, and then stop subsidizing the school?

Mr. Branstad. Congressman, we do address that issue and it is interesting because of the low incidence of disabilities. What we found is that the number of kids identified in that area probably isn't going to change much, depending upon the resources. But the high incidence ones which are the ones with like specific learning disabilities, are the ones that have been going up the most

dramatically, and I think that's what you are and we do have specific recommendations. I'm going to let Todd address them.

Mr. Jones. Let me mention a couple. One recommendation is the general recommendation to move to a system that is based on outcomes, and while that seems to be one that would be more easily applied to children with specific learning disabilities, it can be applied equally and appropriately to children with other disabilities.

For example, a child with severe mental retardation who hypothetically will not graduate from high school, and instead will just time out based on service, it still is an appropriate outcome for the state to look at local education agencies, and say how many of those children are going out and getting jobs?

If that number happens to be five percent, and is stagnating there, that is a failure. If that district instead is moving from 5 to 8 to 12 to 20 percent, and is being judged on its effectiveness in helping children move out into the working world, even though they haven't graduated from school, that's an effective outcome measure that would apply for children with the more severe disabilities like that.

Also on the issue of moving kids out of special education, one thing that's very clear here is that by focusing on remediation and by focusing on providing services that assist the child, there are many children with disabilities like learning disabilities that will no longer have a need for service.

It is not that their disability has gone away, it's just that they no longer have a need for the intensive services they previously needed. The key will then be moving those children on to regular education, and those resources can be more effectively redeployed to other children.

Mr. Petri. But what's the incentive for the school principal that has tough budget problems and states are cutting back? They are all under pressure to cut off this source of funds. Just because the kid is reading to grade level, I mean, that's the goal of the whole program.

Say you succeed and we are spending money on this, and you succeed. However, if you categorize the person as a success, you lose X-number of federal dollars.

Mr. Jones. From the federal level, you actually did the heavy lifting five years ago when you changed the federal formula from one that is based distribution of funds on how many children you have, to the population of your state. Most states are moving in that direction, or at least moving away from a system where having N+1, N+2 children brings in extra dollars.

And by doing that, it discourages - that's a lot of what finance-driven over-identification is about. It's keeping around the kids who really are on the margin for needing services, but their head counts still helps us.

When you move away from that system, you move away from that problem.

Chairman Boehner. The Chair recognizes the gentleman from Massachusetts, Mr. Tierney, for five minutes.

Mr. Tierney. I thank the Chair. Thank you, gentlemen, for being here this morning. I want to follow up on a line of questioning that was started by our ranking member a little while ago, because I want to clarify something.

Mr. Jones, can you tell me exactly what civil right protections are associated with Title I services for private schools?

Mr. Jones. What civil rights protections are there for children in private schools? The obligation of the LEA, if it is using federal Title 1 funds, and they are distributed to an institution which is discriminating on the basis of race or on the basis of ethnic origin or on the basis of sex, it is the obligation of that LEA to manage their distribution of funds in a way that is not discriminatory.

That doesn't mean that OCR comes and does investigations of the local private school. What it does is it means that there is an enforcement action for the local education agency on how they are administering that program.

And that exists today, and in fact, I can say as Deputy Assistant Secretary, there are complaints outstanding against districts for exactly those kinds of issues.

Mr. Tierney. So are you suggesting then when you talked about this voucher concept here, that in addition to those rights that you just mentioned, that the individual rights and protections afforded under IDEA also follow the child if he or she then attends a private school?

Mr. Jones. It depends on how the child is going to the school. If it's under the long-standing program that Congressman Isakson was just -

Mr. Tierney. No, no, I guess we're talking about your new iteration here, your use of the word vouchers.

Mr. Jones. Okay, and again, that's not a word I'm going to use to describe those private supplemental service programs.

Mr. Tierney. Well, then whatever you call them, do the IDEA protections afforded under that statute follow that child?

Mr. Jones. It depends upon the nature of the program set up by this Congress, or by states, and frankly there is only a handful -

Mr. Tierney. I mean, you are making the recommendation. What do you envision on your recommendation? Will we or won't we allow that to follow?

Mr. Jones. What is being envisioned here is that those safeguards are going to apply depending upon how the program is shaped. They may or may not apply depending upon how the program is

described.

Let me give an example. If a child voluntarily leaves a public school system and moves to a private school, is it appropriate under some other side voucher program, having nothing to do with special ed for that local education agency to provide occupational therapy services using staff paid for with IDEA funds for the child in that private school? And which civil rights protections would apply?

That's a fair question. The Commission is saying that has to be worked out as these programs are designed. They simply shouldn't be ignored as the program is set up.

For example, what protection goes along with occupational therapy services?

Mr. Tierney. So I guess what you're basically saying is that you haven't made a recommendation, that you can see it sometimes following and sometimes not.

Mr. Jones. No, the recommendation is that IDEA not be viewed as a barrier in all cases to the provision of services, and that the goal -

Mr. Tierney. Which is another way of saying that you can envision or you recommend that sometimes those protections don't follow.

Mr. Jones. For the child, the question is how are the funds used, not the question of the child. The child has civil rights protections or not. The question is -

Mr. Tierney. The question is does the child retain the protections under IDEA or do they not?

Mr. Jones. If IDEA funds, presumably the IDEA funds were following that child, presumably those protections would exist.

Mr. Tierney. The question is it your recommendation or not?

Mr. Jones. No, the presumption in the report is that those exist. I mean, I have to stand on what the report says, not necessarily the implications from it.

Mr. Tierney. The report is not as clear there as some might hope, and as well as a number of other areas where the report really wasn't very clear.

You talk in the report about a need to deal with the special education teacher and related services, a personnel shortage, and you talk about increased recruitment and retention, but you don't really provide very much by way of recommendations. Why not?

Mr. Jones. Well, I would disagree with the sentiment that there aren't recommendations. There are recommendations to explore. In fact, I will go to -

Mr. Branstad. Well, one example would be paperwork. If we heard one thing clear, loud and clear from teachers, it's that the demands and the additional paperwork are driving a lot of people out of it.

Mr. Tierney. I agree with you.

Mr. Branstad. And we are trying to address that issue. We know that is not easy because we also have to protect the civil rights and the rights of the child. So as we are trying to reduce the paperwork, streamline it, and make it more efficient, we don't want to lose that protection that is specifically designed to protect their civil rights.

Mr. Tierney. I have a number of people in my family that teach in the special education area, so let me ask you this. Beyond the paperwork, because clearly that's an issue.

Mr. Branstad. Yes.

Mr. Tierney. But it is not the only motivating issue, did you look beyond that issue and see what else may be motivating teachers to leave the profession, or to have difficulty staying in it, to understand why people aren't attracted to these careers and this type of education like pay, like conditions, failure to have a mentor, failure to have continuing education support?

Mr. Branstad. Yes. All of those things - I think adequate training is one of the concerns. In the section entitled teacher recruitment and retention, there are four bullet points: experimenting with different pay for educators ensuring special needs; experimenting with performance-based, or knowledge and skill-based pay with the possibility of higher pay for successful special ed educators is another bullet point; developing high quality alternative routes in the classrooms and enabling high potential educators to enter the profession and receive on-the-job professional development; and the fourth bullet point is improving working conditions for special educators by reducing paperwork and mitigating adversarial nature of special education.

We did hear that, the adversarial nature of it and that a lot of teachers just didn't like to be into something that's adversarial. That's not why they got into teaching. They really want to help kids, but they don't want to be in a dispute or in litigation kind of directed business.

Mr. Tierney. Well, this committee has been struggling for a number of years now in trying to reform teacher education and the Higher Education Act is usually the vehicle that we do that, as well as some other statutes. Some have had some success more than others.

What proposals do you have that would improve on what we have been doing in terms of improving that higher education system so that we get more and better qualified teachers for this area?

Mr. Branstad. Well, I think we clearly recommend that there needs to be training for general ed teachers and for administrators in dealing with special education. That's an idea that I think has been sorely lacking around the country. That's one of the areas.

Mr. Jones. I can offer a couple of others up. There is a recommendation that states and universities work closer together to identify which universities are producing students who are producing students with successful outcomes. In other words, which teachers have students who do better in the same conditions and the same schools based on their training from different universities?

There is a suggestion that there be training provided that's in classrooms so - and I don't remember who mentioned it, but the idea that children, or teachers arrive in classrooms and have no idea, they have never seen a child with special needs before and don't know how to deal with them in any extent.

There is a recommendation that there be greater focus on preparing teachers while they are in college for the realities of working life in the classroom, aside from just the kids. How do you deal with management issues? Those are some of the recommendations that the Commission had, and there are a few more within the report as well.

Mr. Tierney. But no recommendations as to how we go about -

Mr. Schaffer. Excuse me; the Chair is going to recognize the gentle lady from New York, who is next. Perhaps she will yield you some of her time.

Mrs. McCarthy. Thank you. I know a couple of my colleagues talked to you about the Medicaid reimbursement. Are you going to do a recommendation that someone follows through on how to deal with that issue as far as medical course for our schools on IDEA? Or is it just going to be dropped?

Mr. Branstad. In terms of the whole Medicaid issue, we didn't feel that we had enough time to get into -

Mrs. McCarthy. Oh no, I know you have said that, but are you going to recommend that through the President or the Department of Education, that someone follows through to see what the solution is on that?

Mr. Branstad. Yes. I believe there is a need, and we did talk about the need for greater coordination. I think there needs to be follow-up work done on that with the Department of Ed working directly with the people that oversee CMS, that oversee the Medicaid program.

Mrs. McCarthy. So that will be a follow-through so that when we start dealing with IDEA, as we are starting to do now, that we will have some recommendations on how to work with this?

Mr. Branstad. Based on the questions that were raised yesterday in the Senate hearing and today, I am asking the Department of Education to work directly with CMS on that issue, because I think that is an important issue. It is one that we didn't have the time to get into in great depth.

It is also a complicated and difficult issue.

Mrs. McCarthy. I understand.

Mr. Branstad. We know there is no easy answer, but it does need to be addressed.

Mrs. McCarthy. It has to be, because each and every school that is dealing with certainly some unique children that can do very well in school, but they do need full-time nurses, nurses aides, and it should not be the burden of the school in my opinion to be able to have to pay these finances out.

Mr. Branstad. I agree with you wholeheartedly on that.

Mrs. McCarthy. And I'm going to throw out one other thing, because we're talking about prevention. There are a number of us here that have been trying on the federal level to have every child tested at birth for hearing.

It costs $35. That's $35, and if we find out at birth that this child has a hearing loss and can work with that baby, we will save a lot of money further down. I believe with you holistically that we have to start at birth in my opinion on a lot of these issues.

A number of things that I have found through my constituents, especially those that are in the military, one of the biggest problems that they seem to find when they have children with special needs is that obviously they are transferred almost every two years.

They take their IEP profile of their child, go into a new school, and the new school just throws it out and says no, we don't do it that way, we don't need it, we have our own program. The frustration for certainly the parents, and certainly for the child, is like overwhelming.

Now, obviously we have become a country that people move every seven years I think the average is now, so you can imagine what parents are going through, and yet we don't really address that, because it could be from one district to the next, to be honest with you, and that's something that we're going to have to start to deal with.

And I didn't notice if there was anything in the Commission on that.

Mr. Branstad. Todd?

Mr. Jones. Actually there is and it is hiding in plain sight. It's the recommendation that the shift in IEP's be one from process to outcomes.

There is an anecdote in here where one of our witnesses discussed how an IEP she saw had little to do with anything but certain school-based ideas and process-based demands, and had nothing to do with the fact that the young man wanted to be a merchant marine, and needed the skills to do that.

We need to shift IEP's to ones that are based on outcome such as wanting a child with severe mental retardation to have a job when they leave at age 21 from the system. That is an outcome that is readily identifiable in New York, Colorado and California, whereas when

somebody transfers from system to system, and then hears well, we have a different system so our process needs to be different. They are right.

That's because they are reacting to the perverse incentives of a system that is designed strictly to process and not to the outcome of what that child should be focused on including learning to read, learning to do math, understanding basic community skills, getting a job, and going to post-secondary education.

Those are tangible outcomes. If you shift the IEP's to that, you will see a greater ease of transition from location to location.

Mrs. McCarthy. Thank you.

Mr. Branstad. The Chair recognizes the representative from California, Ms. Davis.

Mrs. Davis. Thank you, Mr. Chairman. I just have a few follow-ups, and I understand that most of the questions that I had have been answered, and I appreciate it.

I also am very pleased that we are going to be focusing more on how we integrate our health care dollars with special education. That's been a long - it's not only with special education, it's also with regular education, and I think that we need to go into great depth in taking a look at how we do that.

And I would suggest looking at some good models around the country where they have at least made strides in that area. I think that would be helpful. California has some, although I think other states probably have done some good work in that area as well, and having the flexibility there to do what they need to do.

One of the other issues that I know you've addressed is that one of paperwork, and I'm not sure if we've fully gotten a handle on what the Commission believes, what you think, should be eliminated from the IEP to help with the paperwork issue.

I have just heard you discuss the need to have flexibility in terms of students who are moving in the military, and I know as the representative from San Diego, how important that is in San Diego, but can you be specific?

What would you eliminate in the IEP? And is that the kind of paperwork focus that we should be having?

Mr. Branstad. We didn't specifically say anything. The IEP's do vary substantially from district to district and from state to state. What we're saying is the focus should be on the outcome or results of the child and it ought to be truly individualized.

The intent has always been to be an individual education plan, but in some cases, it has been too boilerplate and not enough individualized with goals and benchmarks for that child. That's where we think the focus needs to be, and less on all these procedural things that have made

them longer and less meaningful.

Mrs. Davis. Can you be a little more specific about what we can eliminate, because often we add things, but we never take anything away.

Mr. Branstad. Good point. Todd?

Mr. Jones. You know, some of the most insightful testimony that we heard was actually in San Diego at our hearing at the Grant Hotel, because it was not prescribing what's necessarily in the IEP from the federal level, which drives the paperwork.

Yes, that does, but that could be distilled down into two sides of two pieces of paper pretty effectively. What we heard in testimony was that additional paperwork comes from two places. The first is from the regulatory monitoring process, which is when the Office of Special Education Program strongly hints to a state that it needs to change its state documents to reflect a greater emphasis on transition in this case, or in some other area. The second is from local districts and states themselves from what we would call defensive blocking mechanisms for litigation, not that they are effective or necessarily mean anything in terms of service or in terms of preventing later litigation, but districts seem to believe, and the attorneys have said so, that they believe paperwork covers their trail, and gives them the paper trail to defend later litigation.

The advocacy attorneys who appeared before us in San Diego said that that's meaningless. School attorneys who appeared before us elsewhere said no, it actually works. So that's part of what drives it, the extensive process monitoring and the fear of litigation.

Mr. Branstad. We also heard in one of our hearings from New York about how the federal agencies, just because the wording was a little different, even though the intent was about the same, had to go through a whole lot. I don't think the thing would still have been resolved when he testified before our Commission, so we think that needs to be eliminated.

Mrs. Davis. Thank you very much. Thank you, Mr. Chairman.

Chairman Boehner. Mr. Payne, you're up next.

Mr. Payne. Thank you. Thank you very much. I come up next and last, right? Let me just ask a question. Thank you very much, Mr. Chairman for the work that you have done according to your report that you had 13 open hearings, and 109 expert witnesses, and many parents and teachers and students involved. That's great.

I just have two quick questions. One deals with the Finding 6, which says that many of the current methods of identifying children with disabilities lack validity. As a result, thousands of children are mis-identified every year, and you would say some are not identified.

I have a concern, and it might have been brought up before, but about the mis-identification of minorities. We find that in some school districts, as many as 30 or 40 percent of African

American boys are in special ed, and I wonder if you have any way of looking at that?

And then in the conclusion of your summary on the major recommendations, on the second major recommendation about embrace a model of prevention and not a model of failure, I think that's good, but where you talk about the current model. Guiding special education focuses on waiting for a child to fail, not on early intervention, and to prevent failure.

I wonder what your feeling is about one, the full funding of Headstart, or to K, ages say three on to K which once again is costing money, but I think that these things kind of work together.

Mr. Branstad. Thank you, Congressman Payne. With regard to this system of waiting to fail, we do recommend the elimination of these IQ discrepancy tests. I think your point about the need for early intervention and programs that work with infants and toddlers, and programs like Headstart can make a real difference.

We also heard from an inner-city principal who had worked closely with parents on working on simple things that to notify them early on what's expected their child needs to know when they start school, even if they haven't had the benefit of Headstart. That can be very, very helpful.

So in addressing the second part of your question, I think the first part of your question had to do with over-identification of minority kids, and we had several members of the Commission, Katie Wright from Illinois, and Jack Fletcher and Floyd Coos, who specifically worked on that. I think there is a section on page 26 of the report that specifically deals with that disproportionate representation of minorities in special ed.

That is an area that the President also mentioned in his charge to us, and one that we took very seriously, and one that I think we have some good recommendations on.

Mr. Payne. Thank you very much.

Mr. Schaffer. [presiding] I have got a couple of questions that I would like to ask. First, regarding the Office of Special Education Programs, how would you characterize its strengths and weaknesses? The Commission spent a good deal of time evaluating that office so I would like you to comment and elaborate a little further here for us today.

Mr. Branstad. First of all, I will probably let Todd go into most of the detail on that, but on this Commission we had a number of researchers that have dealt specifically with that office. We also had some ex-official members who are very knowledgeable, so we had some people that had some real knowledge and in-depth experience.

This is an area where we went into considerable depth and recommendations on major reforms and changes that can be done administratively.

With that as kind of a lead-in, let me let Todd go into more of the detail.

Mr. Jones. Let me divide the discussion into two halves, the monitoring and enforcement side, and the research side. On the monitoring and enforcement side, there is a view from the Commission that there is too heavy an emphasis on process, and process compliance.

There are roughly 814 process points on which states are judged when looking at IDEA compliance. Now, the question is whether that is driven from the staff and the management, or is it driven from the law? It's pretty clear that the law drives a significant part of that.

So even though there is the process view of the world, it's the law itself which helps drive that process focus because it doesn't allow in many ways -

Mr. Schaffer. What is significant? Half? Three-quarters? What would you estimate?

Mr. Jones. That is process or the -

Mr. Schaffer. There are 814 process points. Some are driven by staff and administrative and by statute -

Mr. Jones. Easily three-quarters. To give an example, in the discussion of transition within the act, there is a focus on having the right transition regulations in place, and whether we have the procedures in place.

Fundamentally the questions states should be asked is how many kids are going to college, how many kids are passing the state regents exam, and how many are getting jobs? Those are real substantive outcomes in transition, but OSIP can't monitor those as substantive achievement outcomes -

Mr. Schaffer. My question was -

Mr. Jones. - because the law won't allow it.

Mr. Schaffer. - on those 814 points that you would identify as process-oriented, and you said some are administratively driven.

Mr. Jones. I would say the bulk, more than three-fourths.

Mr. Schaffer. You said some are administratively driven and some are a function of the law.

Mr. Jones. Yes.

Mr. Schaffer. And that is what I'm trying to get at.

Mr. Jones. I would say the bulk; at least two-thirds are driven by the law.

Mr. Schaffer. Are driven by statutes. That's something we can do something about.

Mr. Jones. Absolutely.

Mr. Schaffer. Got it.

Mr. Jones. The other side is the research side, and this is true not in Office of Special Ed programs, but in all of the special ed and rehab services administration. There is a bit of a silo mentality.

It is very clear that there is not enough collaboration between the disability research office, the rehab services administration research office, the special ed program research office, and with offices outside like at NIH or at the National Science Foundation.

The collaboration is not there. There needs to be a much closer working relationship than there is now.

Mr. Schaffer. So what is that going to take in your estimation?

Mr. Jones. I think it takes better management of the office, and I think Assistant Secretary Pasternak is well prepared to do that because he was on the Commission and saw the need. Frankly, in speaking with him, I believe he is motivated to make the changes.

Mr. Schaffer. in terms of focusing more attention on the outcome side -

Mr. Jones. Right.

Mr. Schaffer. - can you elaborate a little further on that? What kind of changes do you recommend there? How did the Commission treat that question?

Mr. Jones. Well, the changes need to be made. The sticky part is under the statutes; the regulations under the statute cannot be changed from where they stood in 1983 unless Congress gives explicit authorization. That was written into the statute back in 1983.

It's up to Congress to change the standard against which states are judged, and put the - if that's what you desire, is to change it to this kind of outcome-based system, you need to put that into statute.

Mr. Branstad. We think that's a real fundamental decision, and one that we strongly recommend. In our meeting in Houston, I visited a school down there, and we asked of the special ed kids how many of them were getting jobs and how many were going on to higher education. They had no idea and this was supposed to be an exemplary school.

Mr. Schaffer. Let me jump in the last minute here to the Commission's recommendations regarding school choice. Your proposal was to amend IDEA to allow states to use federal special ed funds to enable students with disabilities to attend schools or to have access to the schools of

their family's choosing, and I presume that would include charter schools, other public, private, partnerships, and specifically, I'm curious whether you evaluated the applicability of Florida's McKay scholarship program.

Could you elaborate on that a little bit?

Mr. Branstad. We had one of our hearings in Coral Gables. We did hear a lot about the McKay scholarship. I think we were concerned that there needs to be some accountability when there is a decision made by the parents.

The McKay scholarship is a unique program in Florida. We heard many good things about it, but we also felt there needs to be accountability also built in when programs like that are established.

Mr. Schaffer. Mr. Scott, you are up next. Are you ready to go?

Mr. Scott. Thank you, Mr. Chairman. I want to thank the Governor and Mr. Jones for a very comprehensive and helpful report, particularly your endorsement for more funding for Part C.

I think it's important that we get ahead of the curve and those early intervention services are extremely cost-effective, and I appreciate your endorsement of that.

I just had one question. You touched on the idea of a risk pool. I know some very small counties, if they ever have a severely disabled child, will have to raise taxes if they want to deal with that one child.

What can be done to alleviate the catastrophic effects or impact on a small county, such school system, through a risk pool?

Mr. Branstad. Dr. Douglas Gill chaired that particular task force that dealt with the funding issue, and he's from the State of Washington. They have done some of that in his state, and I think they have begun to do that in some other states around the country.

I will let Todd kind of go into the details of how that is envisioned.

Mr. Jones. There are a couple of ways of looking at it. One is risk pools and one is safety nets. Under one concept, it works like a non-profit insurance pool. You put up some money to participate in the pool, and then when you have children who have certain prescribed needs, you would be able to bill back to that pool and draw down the funding for that, spreading the risk across multiple agencies, multiple local schools.

In the other concept, and this is one that they use in Washington, there is essentially a board that looks at the need of the agency, and they will look down and say okay, have you, for example, billed Medicaid for the following bills?

If the district hasn't, they may not be able to access the funds, and it is done on a more judgmental basis. Has this district done everything it can with the resources it has to provide for these costs, and is the district truly representing costs that are associated with this child, or are they masking other costs?

This goes back to the underlying recommendation in the report which is we, the country, need to know what special ed costs. We don't have a good answer for that right now.

Mr. Scott. Are there any programs to cover catastrophic costs? And if you have a $50,000 or $100,000 case, would there be insurance or something to cover everything over the first $15,000, $20,000? Has that idea been floated around?

Mr. Jones. There are about a half dozen states, and in fact, they are listed in a box in that section of the report, and Maryland is one of them. Washington, Utah - I will lose track if I try and name any more who have risk pools like that.

In those cases, some of them are funded separately by the state. One of the unfortunate problems is when the money is gone, the money is gone, and when the pool is dry, you can't draw.

Mr. Scott. Thank you very much, and again, I appreciate your hard work and very helpful report, and I yield back, Mr. Chairman.

Mr. Schaffer. I would like to echo the comments of my colleague. Your work on presenting the report is something that is obviously very useful to not only those of us on the committee, but all of those who are interested in reauthorization reform of the IDEA program.

Governor and Mr. Jones, I appreciate your presence here today, your testimony, and the time you spent. I appreciate the time our colleagues have spent attending today's hearing, and if there is no further business before the Committee, we will stand adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]

APPENDIX A -- WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN A. BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

STATEMENT BY THE HONORABLE JOHN A. BOEHNER
CHAIRMAN
HOUSE EDUCATION AND THE WORKFORCE COMMITTEE

July 10, 2002 Hearing on

"REFORMING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: RECOMMENDATIONS FROM THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION"

Good morning. Let me welcome all of you to this morning's hearing—Governor Branstad, the Chairman of the President's Commission on Excellence in Special Education; Todd Jones, the Commission's Executive Director; our senior Democrat colleague from California, Mr. Miller; and all of the members of our committee on both sides of the aisle.

Since October of last year, this Committee and the Subcommittee on Education Reform have conducted a series of hearings preparing for the reauthorization of the Individuals with Disabilities Education Act, a statute that has played an important role in ensuring that the doors of learning are open to millions of students with disabilities since it was originally passed in 1975. During these hearings, we have heard from special education experts, education researchers and school finance experts; state, district, and school administrators and officials; parents of children with special needs; and others with expertise in the field of special education.

At today's hearing, the sixth in this series, we will hear from the Chairman of the President's Commission in Excellence in Special Education. The Commission's report, which was submitted to the President last week, is a welcome addition to the materials this Committee is reviewing in its examination of the special education system.

I applaud the Commission's emphasis on reducing the paperwork burden for teachers, improving academic results for children with special needs, and maximizing options for parents with such children. This expert panel has soundly rejected the notion of turning special education into a new federal entitlement spending system, which would directly impede our efforts to reform the current system to address the growing concerns of teachers, parents, and children with special needs.

Despite the improvements made to IDEA in 1997, major problems remain in the special education system today—problems that money alone won't fix for teachers, parents, and children with special needs. Teachers, for example, want the special education paperwork burden reduced. Parents of students with special needs want better results and options. And too many children, particularly minorities, are being wrongly placed in special education classes they don't belong in. The Commission has done a great service to students with special needs as well as teachers and parents by soundly rejecting the notion that IDEA should be turned into a mandatory entitlement.

The Commission's report is filled with dozens of recommendations, with many nuances, and this Committee should closely review this report to see how we can build on the reforms of the No Child Left Behind Act to improve the quality of education provided to children with special needs. I know that we will approach this reauthorization with the same vigor, candor, and trust with which the Members of this Committee approached our work on the No Child Left Behind Act. We know children with special needs, their parents, and our schools deserve nothing less.

I now yield to the distinguished Ranking Minority Member from California, Mr. Miller, for whatever opening statement he wishes to make.

APPENDIX B -- WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Talking Points
Hearing on Report by Commission on Excellence in Special Education
July 10, 2002

Good morning, I am pleased to welcome Governor Branstad to our Committee today.

I want to start by thanking the individual Commissioners who helped prepare this report and for their service over the past 8 months on this Commission.

I must say that I think the substance of the report is somewhat thin and its conclusions vague relative to the amount of time and resources that apparently gone into this effort.

19 days of public meetings.

109 formal witnesses and 175 individuals providing public testimony

5283 pages of transcripts from public hearings.

And virtually none of the real issues have been tackled.

On the two highlights of the report – vouchers and full-funding - the Commission has taken positions directly at odds with those of most parents, educators, and members of Congress.

The Commission supports vouchers. But as we know the public is opposed, and this Congress is opposed – by an overwhelming majority - to that policy. And as we see in Florida, adopting vouchers will mean that children with disabilities will have even weaker statutory protections and fewer rights than they have now.

The Commission's opposition to full funding of IDEA is beyond belief. You have to look far and wide – as the Commission apparently did – to find a superintendent or state official who does

not feel that full funding is crucial to the success of the IDEA program, indeed to the whole public education system.
If your point was that money alone is not sufficient, I would be the first to agree with you. You will find strong consensus among members of this Committee that resources and accountability go hand in hand.

Last year we were told by this Administration and House Republicans that full funding would have to wait for IDEA reauthorization.

Now we are being told that the Administration supports IDEA reauthorization without full funding.

On IDEA and education overall, this Administration is assembling an increasingly consistent track record of baiting support for reform with a promise of resources, and then breaking that promise almost as soon as it is made.

I think our nations students, our nation's parents, and our local and state leaders who are grappling with serious budget challenges deserve better. Much better. In fact, they ought to be outraged.

VOUCHERS

Vouchers politicize IDEA Debate – I also want to express my disappointment with the report for both politicizing special education through its support of vouchers and the reports overall lack of new constructive policy recommendations.

Despite the recent Supreme Court decision on the Cleveland voucher program, private school vouchers, whether for children in general education or special education are not sound educational policy and do nothing to further our efforts at public school reform – the system which educates 90 percent of our children.

Children in Florida who are enrolled in the special education voucher program have effectively given up their right to a free and appropriate public education ("FAPE"), the bedrock Constitutional issue on which the IDEA law is based.

The report's nuanced support of vouchers further entangles our efforts to improve the education of disabled children with politics. Vouchers was a topic that we disposed of early on during our work on H.R. 1, eliminating the need for a protracted political battle that paved the way to a bipartisan reauthorization of the Elementary and Secondary Education Act. I hope that vouchers do not bog down our efforts on IDEA.

FULL FUNDING

Report Fails on Full Funding - This report also fails to support mandatory funding for IDEA and questions whether Congress needs to live up to its commitment to fund 40% of the cost of educating children with disabilities. For years, we have supported full funding of IDEA on a bipartisan basis. For the Commission members to back away from this commitment is troubling.

OTHER ISSUES

No relief for high cost services - The Commission report further suggests that cash strapped localities who have struggled in paying for the costs of children with disabilities whose services total tens and hundreds of thousands of dollars should use unexpended Federal funds to pay for these services. This recommendation doesn't reflect the reality that these school districts often lack the resources to provide these services, even when you include their Federal allocations.

Medicaid forgotten - Also troubling in the area of finance is the Commission's lack of attention towards the problems that school districts encounter in accessing Medicaid funds for related services. For far too long, school districts have been unable to access reimbursement for legitimate health and administrative services – the Commission report fails to provide even one recommendation in this area.

Undermines FAPE through paperwork reduction - The Commission report also recommends a 10 State pilot project aimed at reduced paperwork. I am greatly concerned that such a pilot project could only lead to an undermining of the protections which IDEA provides to children with disabilities.

You want accountability? You want evidence of results? You are going to have to write it down somewhere.

SUMMARY

I stand ready to work with the Administration and others to improve the educational results and outcomes of children with disabilities – clearly we want all of them to have every educational opportunity.

IDEA was last reauthorized by Congress in 1997 in bipartisan, bicameral process. Town-hall style meetings open to parents, educators, policy experts, and all other interested parties were held to hear concerns and get feedback on draft proposals. This process was a marked change from several failed, partisan efforts to pass an IDEA bill in 1995 and 1996.

I very much hope that the next reauthorization of IDEA be characterized by the same kind of cooperation that marked the 1997 effort.

But I can tell you that it certainly will not be if this Administration's priorities are to "voucherize" special education provide insufficient resources, and undermine FAPE. These recommendations won't improve the education of disabled children. They will only distract us from implementing and enforcing this important law.

APPENDIX C -- WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

OPENING STATEMENT OF EDUCATION REFORM CHAIRMAN MIKE CASTLE
RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION
ON EXCELLENCE IN SPECIAL EDUCATION

Thank you, Mr. Chairman. I want to extend a warm welcome to former Governor of Iowa and Chairman of the President's Commission on Excellence in Special Education, Terry Branstad. Years ago, I witnessed Terry's commitment to education when he worked with former President Bush to convene our Nation's governors for the historic 1989 summit. Today, I am glad -- but not surprised -- to see that Terry is still working to make a quality education available to all Americans.

When Terry and I were at the summit dinner in Charlottsville, our tent overlooked the academic village founded by Thomas Jefferson, where it was said that students could look out to the horizon poised between their education and their future -- between what they are and what they could become.

Today, despite progress in classrooms around this country, children with disabilities are not completing school or performing at levels near their nondisabled peers. Their dreams for the future are often beyond their reach -- and below our expectations. For this reason, I am especially pleased that your recommendations seek to make accountability for results just as important for children with disabilities as for any other kids.

I also want to commend you for your focus on early identification and intervention. As you mention in your findings, more than half of the children in special education programs have specific learning disabilities. Yet, unlike many severe physical and mental disabilities, some are identified because they have failed to learn fundamental skills like reading. Other children, who have real, intractable learning disabilities, may not be identified until they fail for several years. In either case, it is clear that we must do more to identify young children who may be developmentally delayed and provide the necessary assistance to help them succeed.

Finally, I must admit that I am a bit disappointed that so many have chosen to focus exclusively on the mandatory vs. discretionary funding issue. In my subcommittee's hearings -- and in discussions with parents, teachers, and schools officials in Delaware and across the country -- it is clear that our current policies do not always deliver the education our children with disabilities deserve. While funding is an important discussion, it is not the only topic for discussion and it is my hope that we can come together to do what's right for our children with

disabilities.

Thank you, Terry, for your hard work on this report. Your findings and recommendations bring a fresh perspective about special education and it will complement our efforts as we move forward of the reauthorization of IDEA. Your Commissioners and your staff -- and especially Todd Jones, your Executive Director -- have much to celebrate.

APPENDIX D -- WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Statement of
The Honorable Dale E. Kildee
Hearing on Report by Commission on Excellence in Special Education
July 10, 2002

GOOD MORNING, I WANT TO JOIN MY OTHER COLLEAGUES IN WELCOMING GOVERNOR BRANSTAD TO THE COMMITTEE TODAY. THANK YOU FOR YOUR WORK OVER THE PAST FEW MONTHS ON THIS COMMISSION AND ITS REPORT.

THE COMMISSION'S REPORT HAS PROVIDED US WITH SOME RECOMMENDATIONS THAT ARE WORTHY OF FURTHER DISCUSSION. THESE INCLUDE ENSURING CHILDREN WITH DISABILITIES ARE TRULY INCLUDED IN STATE AND LOCAL ACCOUNTABILITY SYSTEMS.

THESE ALSO INCLUDE ENSURING INTERVENTIONS ARE AVAILABLE FOR CHILDREN WHO ARE STRUGGLING ACADEMICALLY BUT NOT YET IDENTIFIED FOR SPECIAL EDUCATION.

UNFORTUNATELY, I TOO MUST JOIN MY RANKING MEMBER IN EXPRESSING DISAPPOINTMENT OVER MUCH OF THE REMAINING SUBSTANCE OF THE COMMISSION'S REPORT. THE REPORT'S FOCUS ON PRIVATE SCHOOL VOUCHERS IS DIVISIVE AND BAD EDUCATIONAL POLICY FOR CHILDREN WITH DISABILITIES. THE COMMISSION'S OPPOSITION TO MANDATORY FUNDING FOR IDEA AND ITS DESIRE TO LOWER THE FEDERAL SHARE OF EXCESS COST IS EXTREMELY TROUBLING.

WITH THE INCREASING DEMANDS FACED BY LOCAL SCHOOL DISTRICTS AND TIGHTENING STATE BUDGETS, NOW IS NOT THE TIME TO BACK AWAY FROM ADDITIONAL RESOURCES FOR IDEA.

I AM ALSO DISMAYED THAT THE COMMISSION CHOSE NOT TO ADDRESS PROBLEMS THAT SCHOOL DISTRICTS HAVE ENCOUNTERED IN RECEIVING REIMBURSEMENT FROM MEDICAID. SCHOOL DISTRICTS ALL ACROSS THE COUNTRY SHOULD BE PROVIDED WITH ASSISTANCE FROM THE DEPARTMENT AND THE CENTER FOR MEDICARE AND MEDICAID SERVICES IN OBTAINING REIMBURSEMENT FOR LEGITIMATE HEALTH AND ADMINISTRATIVE EXPENSES.

WHILE THE COMMISSION'S REPORT INCLUDES STATUTORY AND REGULATORY RECOMMENDATIONS, I BELIEVE OUR MOST IMPORTANT WORK CAN BE DONE IN THE AREA OF IMPLEMENTATION. TOO MANY STUDENTS WITH DISABILITIES HAVE YET TO SEE THE FULL BENEFIT OF IDEA. IN LARGE PART, THIS IS NOT DUE TO STATUTORY OR REGULATORY PROBLEMS, BUT A LACK OF EFFECTIVE IMPLEMENTATION AND ENFORCEMENT. PARENTS CONTINUE TO BE OUR TOP COPS ON ENSURING CHILDREN WITH DISABILITIES RECEIVE SERVICES – THIS ISN'T FAIR. OUR EFFORTS THIS CONGRESS SHOULD NOT BE FOCUS ON CHANGE, SIMPLY FOR CHANGES' SHAKE. RATHER, WE SHOULD ENCOURAGE A FULLER IMPLEMENTATION OF THIS STATUTE AND ITS GUARANTEES FOR CHILDREN WITH DISABILITIES.

CHAIRMAN CASTLE AND I HAVE HAD SUBCOMMITTEE HEARINGS WHICH COVERED MANY OF THE IDEAS EMBODIED IN THE COMMISSION'S REPORT. THESE HEARINGS

HAVE SHOWN THAT THERE ARE MANY ASPECTS ON WHICH WE CAN WORK TOGETHER.

THESE HEARINGS HAVE ALSO SHOWN THAT DIVISIVE ISSUES SUCH AS VOUCHERS, INSUFFICIENT FUNDING AND ROLLING BACK CRITICAL PROTECTIONS WILL PREVENT US FROM REACHING BIPARTISAN ACCORD. I HOPE WE CAN AVOID THESE SUBJECTS AS WE CONSIDER THIS LEGISLATION IN THE REMAINDER OR THIS SESSION AND NEXT YEAR.

THANK YOU MR. CHAIRMAN.

APPENDIX E -- WRITTEN STATEMENT OF TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION; ACCOMPANIED BY TODD JONES, EXECUTIVE DIRECTOR

Testimony
of
Chairman Terry Branstad
President's Commission on Excellence in Special Education
to
The United States House
Education and the Workforce Committee
July 10, 2002

Good morning. Thank you Chairman Boehner for that introduction. I thank the Chairman, Congressman Miller, and all members of this Committee for the opportunity to testify before your Committee today.

I am pleased to report to you that the President's Commission on Excellence in Special Education has finished its work. The Commission met its July 1 deadline for transmitting its report to President Bush. This morning I will outline to you the Commission's major findings and recommendations.

On Oct. 2, 2001, President Bush ordered the creation of the Commission. In his Executive Order, he made the following statement.

> **"The education of all children, regardless of background or disability, while chiefly a state and local responsibility, must always be a national priority. One of the most important goals of my Administration is to support states and local communities in creating and maintaining a system of public education where no child is left behind. Unfortunately, among those at greatest risk of being left behind are children with disabilities."**

The President charged the Commission with studying issues related to federal, state, and local special education programs in order to improve the educational performance of students with disabilities. The Commission's effort represented the most expansive review of special education in the 27-year history of the Individuals With Disabilities Education Act.

The 24-member Commission held 13 open hearings and meetings across the country. At those meetings and hearings we heard from 109 expert witnesses and more than 175 parents, teachers, students with disabilities, and members of the public. Hundreds of other individuals provided the Commission with letters, written statements, and research.

Summary of Findings

Finding 1: IDEA is generally providing basic legal safeguards and access for children with disabilities. However, the current system often places process above results, and bureaucratic compliance above student achievement, excellence, and outcomes. The system is driven by complex regulations, excessive paperwork, and ever-increasing administrative demands at all levels—for the child, the parent, the local education agency, and the state education agency. Too often, simply qualifying for special education becomes an end-point—not a gateway to more effective instruction and strong intervention.

Finding 2: The current system uses an antiquated model that waits for a child to fail, instead of a model based on prevention and intervention. Too little emphasis is put on prevention, early and accurate identification of learning and behavior problems, and aggressive intervention using research-based approaches. This means students with disabilities don't get help early when that help can be most effective. Special education should be for those who do not respond to strong and appropriate instruction and methods provided in general education.

Finding 3: Children placed in special education are general education children first. Despite this basic fact, educators and policy-makers think about the two systems as separate and tally *the cost* of special education as a separate program, not as additional services with resultant add-on expense. In such a system, children with disabilities are often treated, not as children who are members of general education and whose special instructional needs can be met with scientifically based approaches, they are considered separately with unique costs—creating incentives for misidentification and academic isolation—preventing the pooling of all available resources to aid learning. General education and special education share responsibilities for children with disabilities. They are not separable at any level—cost, instruction, or even identification.

Finding 4: When a child fails to make progress in special education, parents don't have adequate options and little recourse. Parents have their child's best interests in mind, but they often do not feel they are empowered when the system fails them.

Finding 5: The culture of compliance has often developed from the pressures of litigation, diverting much energy of the public schools' first mission: educating every child.

Finding 6: Many of the current methods of identifying children with disabilities lack validity. As a result, thousands of children are misidentified every year, while many others are not identified early enough or at all.

Finding 7: Children with disabilities require highly qualified teachers. Teachers, parents, and education officials desire better preparation, support, and professional development related to the needs of serving these children. Many educators wish they had better preparation before entering the classroom as well as better tools for identifying needs early and accurately.

Finding 8: Research on special education needs enhanced rigor and the long-term coordination necessary to support the needs of children, educators and parents. In addition, the current system does not always embrace or implement evidence-based practices once established.

Finding 9: The focus on compliance and bureaucratic imperatives in the current system, instead of academic achievement and social outcomes, fails too many children with disabilities. Too few students with disabilities successfully graduate from high school or transition to full employment and post-secondary opportunities, despite provisions in IDEA providing for transition services. Parents want an education system that is results oriented and focused on the child's needs—in school and beyond.

Summary of Major Recommendations

In response to these findings, the Commission has produced *A New Era: Revitalizing Special Education for Children and Their Families*. **This report contains dozens of recommendations addressing each of the Commission's nine major findings and their ramifications.**

Overall, federal, state, and local education reform efforts *must* extend to special education classrooms. What we discovered was that the central themes of the *No Child Left Behind Act of 2001* must become the driving force behind IDEA reauthorization. In short, we must insist on high academic standards and excellence, press for accountability for results at all levels, ensure yearly progress, empower and trust parents, support and enhance teacher quality, and encourage educational reforms based on scientifically rigorous research. In addition, we must emphasize identification and assessment methods that prevent disabilities and identify needs early and accurately, as well as implement scientifically based instructional practices.

Three broad recommendations form the foundation of the report.

Major Recommendation 1: ***Focus on results—not on process.***

IDEA must return to its educational mission: serving the needs of every child. While the law must retain the legal and procedural safeguards necessary to guarantee a "free appropriate public education" to children with disabilities, IDEA will only fulfill its intended purpose if it raises its expectations for students and becomes results-oriented—not driven by process, litigation, regulation, and confrontation. In short, the system must be judged by the opportunities it gives and the outcomes achieved by each child.

Major Recommendation 2: ***Embrace a model of prevention not a model of failure.***

The current model guiding special education focuses on waiting for a child to fail, not on early intervention to prevent failure. Reforms must move the system toward early identification and swift intervention, using scientifically based instruction and teaching methods. This will require changes in the nation's elementary and secondary schools as well as reforms in teacher preparation, recruitment, and support.

Major Recommendation 3: ***Consider children with disabilities as general education children first.***

Special education and general education are treated as separate systems, but in fact *share* responsibility for the child with disabilities. In instruction, the systems must work together to provide effective teaching and ensure that those with additional needs benefit from strong teaching and instructional methods that should be offered to a child through general education. Special education should not be treated as a separate cost system, and evaluations of spending must be based on all of the expenditures for the child, including the funds from general education. Funding arrangements should not create an incentive for special education identification or become an option for isolating children with learning and behavior problems. Each special education need must be

met using a school's comprehensive resources, not by relegating students to a separately funded program. Flexibility in the use of all educational funds, including those provided through IDEA, is essential.

A Final Challenge

Before signing the *Education for All Handicapped Children Act* of 1975 (since reauthorized as the *Individuals with Disabilities Education Act*), President Ford expressed some concerns about the effect of the law. He worried that it would create new complexities and administrative challenges for public education. But ultimately it was hope and compassion that inspired him to sign the bill into law.

More than a quarter century later, we know that many of President Ford's concerns were realized. But we also know that IDEA has exceeded President Ford's greatest hopes. Children with disabilities are now being served in public schools. And new opportunities abound. This Commission is optimistic that our nation can build on the successes of the past and do even better in meeting the needs of special education children and their families. But we will do so only through a focus on educational achievement and excellence, teacher quality and support, and rigorous research. We will succeed if we work to create a culture of high expectations, accountability, and results that meets the unique needs of every child. Only then can the promise of no child left behind truly be fulfilled.

Thank you. I will be happy to take your questions.

APPENDIX F – WRITTEN STATEMENT OF THE HONORABLE DENNIS KUCINICH, SUBMITTED FOR THE RECORD, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Opening Statement
Congressman Dennis Kucinich
July 10, 2002 Hearing
"Reforming the Individuals with Disabilities Act: Recommendations from the President's Commission on Excellence in Special Education"
Education and Workforce Committee

I would like to thank Chairman Boehner and Ranking Member Miller for holding hearings on the Individuals with Disabilities Education Act in preparation for reauthorizing this landmark legislation. I would also like to welcome our witness, Chairman Branstad, for sharing the Commission's findings with the Committee.

The goal of our Committee is to ensure all students receive the highest quality education possible. We must make sure those benefits extend to students with disabilities. The Individuals with Disabilities Education Act (IDEA) helps us fulfill that responsibility by providing funds to assist states with the extra costs incurred in educating students with special needs.

I strongly agree with the Commission's finding of the importance of early identification of students with disabilities. Early identification and intervention can be accomplished in early childhood education. I introduced The Universal Prekindergarten Act to ensure that all children ages 3-5 years old have access to a high-quality, full-day, full-calendar year prekindergarten education. Early intervention is essential in assisting young children and will also result in less referrals to more expensive special education programs. The California Advisory Commission on Special Education has endorsed this legislation because of the benefits it provides to students who may require special education. I hope we will

strongly review the need for universal prekindergarten and how it can benefit all children, especially those with disabilities.

Also, additional training for teachers to learn how to meet the needs of students with disabilities is critical. According to the report you have submitted, only 21 percent of public school teachers said they felt very well prepared to address the needs of students with disabilities, and another 41 percent said they felt moderately well prepared. We must work to increase these numbers in order to provide children with disabilities the assistance they deserve.

We must provide students with disabilities a quality education available in all public schools. The proposal to create a voucher system is not the answer. We must assist states and localities in meeting the costs of special education by supporting full funding of IDEA and providing 40% of the national average per pupil expenditure (APPE), which would be a total of $2980 per child. Currently the federal government only provides 16.5%. This is not sufficient to meet the special education needs of children, forcing states and localities to cut funding for other programs in order to pay the difference. I strongly support legislation to make full funding of Part B of IDEA mandatory. With the upcoming reauthorization of IDEA we have the opportunity to fulfill the promise that Congress made when IDEA was passed in 1975 to fund 40%3 of the national average per-pupil expenditure in order assist states with the high costs of educating children with disabilities and to ensure "no child is left behind."

APPENDIX G – QUESTIONS FROM REPRESENTATIVE RUSH HOLT TO THE HONORABLE TERRY BRANSTAND, SUBMITTED FOR THE RECORD BY REPRESENTATIVE RUSH HOLT, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENATIVES, WASHINGTON, D.C.

RUSH HOLT
Twelfth District, New Jersey

1630 Longworth Building
Washington, D.C. 20515
202-225-5801
Fax 202-225-6025

50 Washington Road
Princeton Junction, NJ 08550
609-750-9365
Fax 609-750-0618

rush.holt@mail.house.gov
www.house.gov/rholt

Congress of the United States

Committee on Education
and the Workforce

Committee on the Budget

Committee on Resources

Member
Congressional Arts Caucus
Congressional Working Group on Children
Congressional Fire Services Caucus
Sustainable Development Caucus
Internet Caucus
Law Enforcement Caucus

July 10, 2002

The Honorable Terry Branstad
Chairman
President's Commission on Excellence in Special Education
80 F Street, NW Suite 408
Washington, D.C. 20208

Dear Governor:

Thank you for testifying before the Education and the Workforce Committee regarding the Report of the President's Commission on Excellence in Special Education.

The Individuals with Disabilities Education Act is a powerful civil rights law with a long and successful history. More than 25 years ago, Congress passed IDEA to give hope to children with disabilities. This law has made significant progress in ensuring all children are receiving a free and appropriate education. Before its passage, children with disabilities were either segregated from other students or received no education at all. Under IDEA we have made progress, but we both know there is much more to be done.

Unfortunately, due to a scheduling conflict, I was not able to ask questions at the hearing. I would like to now submit these questions for your review.

1: We know from the research that there is prevalence of youth with disabilities in juvenile justice system, yet the Commission's report only gives two sentences to the needs of youth in juvenile justice system who are eligible for IDEA. Does the Commission have any further recommendations as to how we can ensure that these children receive the service they need and why did the Commission not address this topic?

2: Homeless children suffer a high rate of disabling conditions. As a result of their high mobility, they face many challenges in their attempts to receive IDEA services. Were homeless children the subject of any hearing or testimony and does the Commission have any recommendations as to how we can ensure that these children receive the services they need?

3: Why in the section on Interagency completely ignore the Center for Medicare and Medicaid Services? Did you find that the very costly heath related services not important enough to address in the Committee's report?

Once again, thank you for testifying before the committee. I look forward to your responses to my questions.

Sincerely,

RUSH HOLT

RH/ch

cc: Chairman Boehner
Ranking Member Miller

Answers to Questions from Representative Rush Holt:

1. We know from the research that there is prevalence of youth with disabilities in juvenile justice system, yet the Commission's report only gives two sentences to the needs of youth in juvenile justice system who are eligible for IDEA. Does the Commission have any further recommendations as to how we can ensure that these children receive the service they need and why did the Commission not address this topic?

Governor Branstad: The Commission has no further recommendations on this topic. The Commission believes that it addressed the nature of this topic in the most appropriate manner. The Commission had a lengthy discussion of the topic at its final meeting. The transcript from the Commission's final days of debate are available at the Commission's website, http://www.ed.gov/inits/commissionsboards/whspecialeducation/. In the June 13 transcript, there is a lengthy debate about this subject on pages 119-129. (The amendment at issue is known as Huntt 1.)

This debate followed the Commission's hearing the testimony on April 30 of Andrew Block, Director of the JustChildren Project of the Charlottesville-Albemarle Legal Aid Society in Virginia, and Deborah Leuchovius of the National Coordinator of Technical Assistance on Transition and Vocational Rehabilitation at the Parent Advocacy Coalition for Educational Rights of Minneapolis, Minnesota. Their testimony addressed juvenile justice issues and is available in the transcript on pages 213-241 and 270-303.

2. Homeless children suffer a high rate of disabling conditions. As a result of their high mobility, they face many challenges in their attempts to receive IDEA services. Were homeless children the subject of any hearing or testimony and does the Commission have any recommendations as to how we can ensure that these children receive services they need?

Governor Branstad: The Commission did not hear any testimony on the subject of homeless children and did not have any specific recommendations related to them or their needs to the extent that their needs differed from those of other children.

3. Why in the section on Interagency completely ignore the Center for Medicare and Medicaid Services? Did you find that the very costly health related services not important enough to address in the Committee's report?

Governor Branstad: The Commission's view was that CMS billing issues related to Medicaid were most appropriately deferred to discussions between the Department of Education and CMS itself. The topic was viewed as too complex to be addressed by the Commission in the short time of the Committee's operation.

The Commission did make very detailed findings and recommendations on the subject of high-cost children in the section entitled "Special Education Finance." Specifically, I would direct you to the section entitled, "Children with Disabilities Who are the Most Expensive to Educate." That section includes a number of groundbreaking recommendations on high-cost health related needs.

APPENDIX H - SUBMITTED FOR THE RECORD, WRITTEN STATEMENT OF THE NATIONAL CENTER FOR HOME EDUCATION, WASHINGTON, D.C.

Statement for the Record: July 10, 2002 - Hearing on "Reforming the Individuals with Disabilities Education Act: Recommendations from the President's Commission on Excellence in Special Education."

The National Center for Home Education applauds the emphasis of the President's Commission to provide flexibility and choice options for parents and their disabled children. According to a survey conducted by the Home School Legal Defense Association, approximately 10 percent of all home school families have special needs children. Because home schooling does such a good job of providing an environment conducive to helping special needs children, very few home schoolers actually utilize Federal IDEA assistance. Nonetheless, some home schooling parents need the flexibility and assistance given by IDEA.

Unfortunately, a majority of home schooled special needs children are denied services every year based simply upon their State of residence and whether that State does or does not consider home schools to be private schools. For example, Texas home schoolers are considered private schools but Georgia home schoolers are not. Denying Georgia home schools IDEA services because of their state law is discrimination, and flies in the face of the IDEA's commission to ""assist States...to provide for the education of *all* children with disabilities" [(20 U.S.C. § 1400(d)(C) (emphasis added)].

In January of 1992, the Office of Special Education Programs (OSEP) at U.S. Department of Education stated in a policy letter that "the determination of whether a particular home education arrangement constitutes the enrollment of the child with a disability in a private school or facility must be based on state law." The problem is that only about 12 state laws classify home schools as private schools, while others make a distinction between home schools and private schools. Despite their legal educating status as a home school, families are routinely denied IDEA services simply because their state does not consider a home school a private school. Currently, home schoolers can only receive services in: AL, CA, DE, IL, IN, KS, KY, LA, MI, NC, NE, TN and TX.

To be consistent with the Presidents Commission's recommendation to incorporate "parental choice" in the next IDEA reauthorization, this discrimination against home schoolers should be solved so all special needs children are treated equally and have the same opportunities regardless of their legal residence.

APPENDIX I - DOCUMENTS SUBMITTED FOR THE RECORD, WRITTEN TESTIMONY SUBMITTED DURING A ROUNDTABLE DISCUSSION HELD IN CENTENNIAL, COLORADO ON JULY 1, 2002 ON "REFORMING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT IS NECESSARY AND POSSIBLE."

The following documents were submitted during a roundtable discussion held in Centennial, Colorado on July 1, 2002 on "Reform of the Individuals with Disabilities Education Act Is Necessary and Possible" and are not part of today's proceedings.

THOMAS G. TANCREDO
6TH DISTRICT, COLORADO

WASHINGTON OFFICE:
1123 LONGWORTH BUILDING
WASHINGTON, DC 20515
MAIN: (202) 225-7882
FAX: (202) 226-4623

DISTRICT OFFICE:
5601 S. BROADWAY, SUITE 370
LITTLETON, CO 80121-8079
MAIN: (720) 283-9772
FAX: (720) 283-9776
SENIOR RESOURCE: (720) 283-9026

CO SCHOOL SAFETY HOTLINE:
(877) 542-SAFE

Congress of the United States
House of Representatives
Washington, DC 20515–0606

COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEES:
EARLY CHILDHOOD, YOUTH AND FAMILIES
OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON RESOURCES
SUBCOMMITTEE:
ENERGY AND MINERAL RESOURCES

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEES:
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
AFRICA

Good afternoon. Welcome to this roundtable on special education reauthorization. I am particularly gratified to have this opportunity to further explore the reform and reauthorization of the Individuals with Disabilities Education Act here in Colorado where I taught Junior High school civics as the Education for All Handicapped Children Act was being debated.

On June 6th, in his testimony before the House Education and Workforce Committee, the Honorable Robert Pasternack, U.S. Department of Education Assistant Secretary for Special Education and Rehabilitative Services, was asked, "What, in his opinion, would be a bad proposal for reforming IDEA?". His answer was short and clear. He said that doing nothing would be bad.

Today, it would be difficult to find a school aged child who has not sat in a classroom with a disabled peer. In fact, according the National Center for Education Statistics, the number of children identified as having an Individualized Education Program (IEP) is in excess of 6 million nationally and over 78,000 in Colorado alone.

Since the passage of IDEA, the number of children identified as being in need of an IEP has increased with an increase in population. However, as a percentage of the public school enrolled population, there has also been an increase in the number of students identified, particularly in the category of "specific learning disabilities." Previous hearings have pointed out that more than half of our children in special education fall under this category. Colorado has a similar category referred to as Perceptual or Communicative Disability (PC) that includes 44% of our school children with an IEP.

On a national basis, 13.2% of students are enrolled in federally financed special education programs as of the 2000 school year. This compares to just over 10% in the 1980-81 school year, and just over 11% in the 1990-1991 school year. This 2% increase has become the subject of much debate and has lead Congress to address the need for further reforms prior to authorizing significant funding increases.

According to the National Center for Education Statistics, among Colorado's largest 21 schools, the percentage of children with an IEP range from a low of 7.1% of the 16,000 students in the Academy School District of Colorado Springs, to a high of 13.4% of the 19,300 students in the Mesa County Valley School District in Grand Junction. Even Cherry Creek School District in Englewood, with 41,000 students, has an IEP for 10.9% of their students.

The President will soon release a report generated by his Commission on Excellence in Special Education. I anticipate there will be some focus on using the Reading First grants such as those recently awarded to Colorado, Alabama, and Florida, to address some of the reading deficiencies which some believe have inflated the IDEA student population.

Our primary concern is addressing the needs of disabled children, and I firmly believe that the federal obligation to provide 40% funding for a free, appropriate public education for students with special needs is possible, just as reform of IDEA is necessary and possible.

Today we will have two panels of speakers. For the first panel, I am pleased to welcome Randy DeHoff, Chairman of the Colorado State Board of Education and Patti Johnson, former Colorado State Board of Education Member.

On our Second Panel, Dr. William Moloney, Colorado Commissioner of Education and Secretary of the Colorado State Board of Education.

We look forward to hearing each of their thoughts on the needed changes in IDEA as well as what they believe is possible to make special education work better for everyone. I want to also direct you to the interactive "Great IDEAs" website on the Education and the Workforce Committee web page. This site will allow us to hear directly from the teachers and principals, parents and coaches, advocates and relatives who educate and care for our children with disabilities on the upcoming reform.

Statement provided by The Honorable William J. Moloney
Colorado Commissioner of Education
July 1, 2002

I am pleased to speak today on the topic "IDEA Reform is Necessary and Possible." I intend to organize my comments in a manner that addresses some of the areas studied by the task forces under the White House Commission on Excellence in Special Education. However, first I would like to say that though IDEA presents challenges in implementation and oversight, in Colorado we are proud of the significant improvements in achievement of students with disabilities that have been noted since an increased emphasis in accountability has been instituted in the 1997 Reauthorization. Students with disabilities are showing some of the greatest gains in our Colorado Student Assessment Program (CSAP) results over the past 3 years. Additionally, students who took our first alternate assessment in 2001 have demonstrated abilities to learn in the area of literacy to levels that many would not have believed possible in the past. Therefore, throughout my comments you will hear support for keeping all students, including those with disabilities in the school, district, and state accountability systems.

Professional Development Most students with disabilities spend the greater part of their educational day in the general education classroom. Therefore, professional development to meet their individual needs must not be provided for the "specialists" in isolation of the "generalists". IDEA funding for professional development must support collaborative training practices across all educators, including the administrators. We know that the principals are key to the successful achievement of students in their schools. As school leaders they must be aware of all of the best scientific research for the learning of all of the students, including those with disabilities. To focus training on the specialists and the special education directors is counter productive and perpetuates a dual system for educating students with or without disabilities.

This collaboration for training should extend to the preservice programs. Colleges and universities with teacher training programs must be encouraged through IDEA incentives to eliminate the separate systems for training while continuing to support specialization as appropriate. For instance, we know that both general and special educators need to know and understand how to teach reading, differentiate instruction, use valid and reliable data to make instructional decisions, and know how to manage individual and classroom behavior. Rather than hope that high quality training exists in both the general education teacher training program and the special education program that are often on the same campus, it only makes sense for the programs to work efficiently and effectively in a collaborative manner to provide this training. IDEA should promote colleges and universities to conduct research in the effectiveness of collaborative training programs for our students and expect accountability for their outcomes in all activities supported by IDEA funding.

Finally, in the area of professional development, it is important to consider the crisis we are in relative to having highly quality educators in all positions in Colorado. Like everywhere in our nation we in Colorado are experiencing shortages in general education, special education, English language learning and in our educational leadership positions. Because students with disabilities spend most of their time in general education, the shortages across all educational

positions impact the quality of their education. IDEA should address this crisis by supporting recruitment and retention efforts at the state and local level.

Accountability The current accountability system under IDEA emphasizes paperwork and process and is not linked to student performance. Repeatedly we hear tales on the "burden of the paperwork" in special education, leaving little time for instruction. Though Colorado is the second lowest state in frequency of litigation on special education issues, every student in special education is treated as though they are the subject of a potential lawsuit and an abundance of paperwork is generated. This results in a focus on procedure rather than good instruction. Ideally, special education success and accountability would be based on how well the students are achieving rather than whether all the paperwork was completed and filed in a timely manner. I am not suggesting that documentation of pertinent data is not needed to determine good instruction. Instead, I am saying that some of the current requirements for repeated notices about meetings, expectations for documentation in educational areas that are not of concern for a student, the prescriptive plans for the development of the IEP and the frequency and requirement for follow up meetings should be reviewed for relevancy to accountability for student achievement.

With the increased emphasis on accountability that is present in the No Child Left Behind legislation we already have a model for accountability that includes students with disabilities. It only makes sense to capitalize on this work that has been completed and be sure that the IDEA expectations for accountability align with that landmark legislation.

Finance Our local districts bear the greatest burden for the costs of implementing IDEA. In Colorado, the local administrative units cover about 70% of the costs. The federal contribution is less than 10% of the costs. If we at the state and local level are expected to implement this monumental mandate, funding should be available to assist us. Once federal funding is provided, local districts should have the flexibility to target funds as needed and not be bound by requirements such as supplanting.

It is important to note that implementation of the law requires a great many state level responsibilities and must continue to fund those activities as well. Also, we know the importance of early intervention, and therefore IDEA should promote the implementation of good scientifically based preschool services.

OSEP's Role and Function OSEP has three functions that I am aware of: professional supervision and monitoring, personnel preparation and development, and knowledge development and dissemination. In Colorado, we found the most recent state monitoring to be an improvement over past practices in that it focused on student performance and program improvement to assure student achievement. However, the report from OSEP came almost 2 years after the initiation of the monitoring process. Timelier follow up is needed to allow state's to move forward with their improvement process in a manner that complies with OSEP demands.

Regarding personnel preparation and knowledge development, I do believe that OSEP should have a role in assuring that states have good scientifically based research and information on

education available. However, I believe that these activities should not be conducted in isolation of other educational efforts such as those occurring in No Child Left Behind.

Assessment and Identification Since the beginning of IDEA, actually PL 94-142 in the 70s, there has been an emphasis on the assessment of students to determine eligibility for special education services. A lot of time and energy, not to mention resources, have been directed to this effort and unfortunately in many cases students have had to experience significant educational failure before they could qualify for services. Though it is important to understand a student's disability in order to determine educational service needs, often the current assessment strategies are not related to instructional interventions. It would be more efficient and effective to have the assessment process more directly linked to a student's performance in the classroom first, then to the performance given appropriate instructional supports or accommodations second, and if the student is still experiencing difficulties move to a higher level of special education services. In other words de-emphasize the diagnostic work of specialists in the assessment process and allow them instead to support the classroom teachers and special education teachers in the intervention process.

Transition Despite all of our efforts under the mandate for "transition programs" for students with disabilities who are 14 years or older, the majority of students leaving the educational system are still underemployed or unemployed. Though ongoing agreements that are formal or informal get made, they often fail due to changes in the players or reduced funding for the activity. Educational leaders are becoming more reluctant to enter into interagency agreements because anything initiated that fails falls back on the educational agency to sustain without the other agency's support, because of the IDEA mandates. Other agencies are not operating under similar mandates for services to students with disabilities. We do have some success stories in Colorado with some ongoing agreements with Vocational Rehabilitation Services, but there is room for great improvement. Some primary concerns exist in the area of mental health for children, including very young children, child care, and transition to adult services. Ideally, federal funding would be better coordinated to ease the establishment of these coordinated services among mental health, human services, and vocational rehabilitation. The accountability measure for all agencies should be in the post-school outcomes data. Measures of success include placement in competitive employment and success in post secondary educational programs.

Finally, through increased accountability we have already seen our students rise to the expectations for higher academic achievement, even our most challenged learners. However, without adequate numbers of qualified educators we can not continue to meet the needs of our students. IDEA must continue to promote ongoing research and training for all educators at all levels and to acknowledge and support the recruitment and retention of these highly trained people.

'hank you again for this opportunity to participate in this discussion.

Statement of Mr. Randy DeHoff,
Chairman, Colorado State Board of Education
July 1, 2002

First, on behalf of the Colorado State Board of Education, let me welcome you to Colorado, and thank you for this opportunity to participate in this discussion.

I am speaking today primarily in my capacity as a state policymaker, charged with making the rules and regulations by which federal and state legislation is implemented in Colorado's public schools. In carrying out that responsibility, I often find myself trying to serve two masters: my constituents, the parents and students whom the IDEA statute and regulations are, theoretically at least, supposed to serve; and those same federal statutes and regulations that often conflict with or preclude meeting the needs of those parents and students.

Those conflicts generally fall under three overlapping issues, and I would encourage this subcommittee and congress as a whole to focus on resolving these issues in the upcoming reauthorization of IDEA. The three issues are:

1. over-identification of students with special needs, primarily in the category of "specific learning disability";
2. a misplaced focus on compliance with procedures and rules rather than doing what is best for the student;
3. a lack of flexibility in developing and applying interventions which often prevents doing what both the parents and the educators agree would be best for the child.

Note that I did not include "full funding" as one of the issues. I am not saying that additional funding is not needed, or that the federal government should not make reaching the statutory 40% federal contribution a priority. But I am in full agreement with Congressman Tancredo, who is, I am proud to say, my representative in Congress, that without significant reform in the areas of over-identification, a focus on procedure rather than results, and local flexibility, additional funding will do little to solve the problems we are experiencing.

The problem of over-identification of students with special needs is becoming increasingly well documented, and in some categories such as ADD/ADHD, increasingly widespread. Under the current statute and regulations, it is far too easy, and apparently far more beneficial to one or more of the parties involved, to tag a child as having a "specific learning disability" than it is to deal with the underlying educational issues that led to the identification. Furthermore, once identified as having a specific learning disability, there is little incentive, and from the special education industry perspective, a significant disincentive, to ever removing that label, regardless of the progress the student may make.

In the case of ADD/ADHD, the incentive is even more perverse and the consequences more dangerous. The incentive for educators is that by medicating the child, the teacher

doesn't have to modify instructional styles, classroom organization, or any of the other things good teachers routinely adapt to meet the needs of their students. It is the easy way out. The danger for the child is that, in many, perhaps even the majority of cases, medication is not needed, and the child's physiology and personality are altered to suit the needs of the adults.

The most significant improvement to IDEA that would address the over-identification problem would be to either eliminate or very narrowly define the category of "specific learning disability." At the very least, making it clear that instructional deficiencies, such that the failure to adequately teach a child to read, do not qualify as learning disabilities, would be a significant first step.

With the passage of No Child Left Behind Act, Washington has begun to shift the focus of federal education legislation and policy from compliance with procedures to getting the desired results. IDEA is the natural follow-on to NCLB in this regard. Far too often, when parents complain to authorities, or the courts, that their child did not receive the necessary services or interventions, the response from educators is, as in a recent court case: "We followed all the procedures." They don't ask: "Is following the procedures helping the child?" It is easier, and legally more defensible under the current system, to ignore what works or what is really needed, and just follow a checklist.

In the non-IDEA world, this mentality has devolved to the idiotic policy known as zero-tolerance. In IDEA, it could be termed zero-responsibility. As long as the procedures are followed, the impact on the child is irrelevant.

I have seen this mentality at work every time we have revised the state rules for special education. When a particular procedure is questioned by a parent because it worked against their child, we are told by our legal advisors that we can't change it because it is required by federal statute or regulation. That needs to change, so that states and localities are free to do what is best for the child, not what complies with some procedure cooked up 1500 miles away in Washington, DC.

The third issue is similar, and in fact is a direct consequence of the focus on procedural compliance. Instead of asking if a particular intervention is working, the question is does it comply with the regulations. In a few exceptional cases, courageous parents, teachers and administrators say "the heck with the rules" and do what they know should be done. When the inspectors come around, they either hide the evidence or lie about it. To admit what they did, even if it worked, is to invite the bureaucratic wrath on them, with the likely result that they will lose their jobs or their program will be shut down. In either case, the child loses, but the system wins.

Any system that results in or encourages that behavior is dysfunctional. Congress can fix this problem in the IDEA reauthorization, by making it clear that local decisions and positive results are the criteria for compliance and success, not blindly following bureaucratic rules and procedures.

If these issues are adequately addressed in the reauthorization, I believe full funding will become a non-issue. First, the number of students needing special education services will decrease, freeing up more money for those who truly need more intensive interventions. Jay Greene's column in the June 12, 2002 Education Week illustrates this well. Second, more of that money will be able to be directed to providing services, rather than documenting compliance with rules and procedures. The administrative burden will be lifted, allowing the attention to be focused on the child.

That really should be the bottom line. Every line of the IDEA legislation and regulations should be examined, asking the question: Does this serve the child or the bureaucracy?" If it doesn't help serve the child it should be eliminated.

We have made the commitment in the non-IDEA world that No Child will be Left Behind. It is time to make that same commitment to our most vulnerable children.

Thank you for this opportunity. I welcome any questions.

Testimony of Patti Johnson
Former State Board of Education Member, Colorado

Good Afternoon, my name is Patti Johnson and I am here today to offer some solutions for the reform of special education.

I am a former member of the Colorado State Board of Education where I served for six years. During those years, I was contacted by a number of parents who had been pressured by the school systems to have their children labeled with various so-called learning disorders. In some cases they were told their children would not be allowed to attend school if they did not begin taking psychotropic drugs.

A Douglas County parent I spoke with said she was told her son had ADHD. What she was being told about the behavior her son supposedly exhibited and what she observed were not consistent. She investigated the matter and the school's special education director eventually admitted that she had coaxed the teacher to answer the questions of the checklist used to determine if the child had ADHD in a certain manner so her son "Would get the help he needed." One parent was told that her daughter had all the symptoms of a learning disorder. The school suggested that the parent take her daughter to a specific physician who would "write a prescription for Ritalin." She instead took her daughter to her pediatrician who performed a full physical exam. It turned out that the child's actual problem was hypoglycemia. Special education and Ritalin would not have cured the child's hypoglycemia and may have caused harm. I will give one more example, though many more exist. Another parent was just seeking extra help in reading for his daughter when he was told that in order to get this help she must be labeled with a disorder, put in special education and take medication before they would consider helping her.

When I investigated the issue I realized that many of the so-called psychiatric learning disorders are an effort to 'medicalize' failures in instruction and discipline at the expense of the child's well being and the rights of the parent. For example, the label of ADHD is assigned if the child exhibits such symptoms as not listening when spoken to, is forgetful, fails to finish homework, fidgets, talks excessively, etc.-there is never mention of the fact that these behaviors may be due to the failure to instruct properly with scientifically proven methods of instruction and failure to enforce discipline in a structured learning environment. In December 1999, the Los Angeles Times reported that tens of thousands of California's special education students were placed there, not because they have a serious mental or emotional handicap, but because they were never taught to read properly.

Parents of children said to have these disorders are generally told that it is a neurological disorder or a chemical imbalance in the brain despite the fact that there are no blood tests, brain scans or any scientific evidence whatsoever to validate these mental disorders. At a Consensus Development Panel conducted by the National Institutes of Health on ADHD in November 1998, it was reported "We do not have an independent, valid test for ADHD, and there are no data to indicate that ADHD is due to brain malfunction. Further research to establish the validity of the disorder continues to be a problem." **This is not unique to ADHD, but applies as well to most of these so-called learning disorders.**

The adjudication that a child has one of these disorders and should be placed into special education and on medication is often done by a team, which includes a parent, a teacher, a social worker, a special education teacher and the principal. The teacher must take time away from the classroom in order to attend these meetings. I attended an IEP (Individual Education Plan) meeting with a single mother. Her son had missed multiple days of school because he had been sick. Consequently, he fell behind in reading. At the IEP meeting I was shocked to learn that this team of school officials had now labeled this normal little boy with five different mental illnesses. When I reviewed his reading program the method of instruction being used was the failed whole language system.

The above factors led me to introduce before the Colorado State Board of Education entitled "Promoting the use of academic solutions to resolve problems with behavior, attention and learning." It told educators that their role was to teach and urged them to refrain from advising parents on medical matters. This resolution was passed by a vote of 6 to 1 by the board in November of 1999. Since that time over 30 laws or resolutions have been introduced or passed across the United States regarding the labeling and drugging of children.

The question is, "Why do so many states have to introduce resolutions or pass legislation to curb schools labeling and drugging children?" Unfortunately, the answer is that under IDEA there still exist financial incentives for schools to label children with learning disorders.

IDEA was originally the Education for all Handicapped Children Act of 1975. The intent of this legislation was to ensure that children with actual physical handicaps—sight impairment, hearing loss, brain damage, autism, etc.-were given the public education they are entitled to. This law was reauthorized in 1990 and the name changed to the Individuals with Disabilities Education Act. The term "handicapped" was changed to "learning disabilities." Today, out of the nearly 5 million children covered under IDEA, 3.2 million of those children have been labeled with subjective learning or emotional disorders. The intent of the original law, the Education for all Handicapped Children Act of 1975, was to ensure that those with physical disabilities received a free and appropriate education. These children are now being shortchanged because such a large percentage of special education funds are being diverted to vague psychiatric diagnoses. Though the standards set for special education are often lower, their graduation rate in the 1995-1996 year was a dismal 28.9 percent.

What are some solutions to turn this unfortunate situation around?

First, we must implement scientifically proven methods of instruction such as intensive phonics programs for all students. Students in the teacher colleges must be trained in phonics instruction. When I retired from the State Board of Education we were just beginning to address this situation. Commissioner Maloney will be able to address this more effectively. Mrs. Treybig will also cover this aspect in detail.

Second, we must address the problem of over-identification. Children should be able to get extra help in school without being labeled and funneled into special education. This can be accomplished by having a clear definition of disability. It must be made obvious that there is a major different between physically based disabilities and subjective disorders. Which brings me to my next point...

Third, We must support parental consent. Parents should be told that the so-called learning disorders are subjective and not scientifically proven to exist. Parents

should also be made aware of the various causes of learning and/or behavioral problems which could simply be lack of academic instruction, the need for intensive phonics, or that some underlying physical problems such as hearing or sight problems, allergies or other real medical conditions (such as the hypoglycemia incident) may be contributing to the child's difficulties in school. These three suggestions are the most important in terms of prioritization.

As an added note for possible discussion...Back in the fifties and sixties children were rarely labeled and drugged. We should review successful schooling practices from this era. This may seem trite, but children need recess in order to learn effectively. I am dismayed when I hear that schools are abolishing recess in order to spend more time teaching. Children, especially at the elementary level, need an outlet for their energy in order to concentrate in class. When I was in elementary school we had a 15-minute recess in the morning, an hour lunch/recess at noon, and a 15-minute afternoon recess. We came back refreshed and ready to sit still and learn. Some children's problems may be as simple as needing time to run around and play.

In my elementary school there were an average of fifty to sixty children per classroom, yet discipline problems and labeling were very rare. Both the principal and parents reinforced the teacher's disciplinary actions. Desks were placed in rows so that the teacher was our focal point. Recently, an elementary school teacher told me that when she was made to change the desks from straight rows to the modern grouping of tables, she saw an immediate result of children misbehaving and not paying attention. Why? Because now they could not focus on the teacher and were distracted by there peers. We need to practice common sense.

One more point I would like to make. Some of the most disturbing stories I have heard from parents were about preschoolers and kindergarten children being labeled with psychological illnesses and drugged just because they could not sit still for long lengths of time. One little boy was always interested in what the other children were doing. Upon entering first grade these youngsters were already labeled and placed in special education classes. For goodness sake, preschoolers and kindergarten children are supposed to be active. As children grow they can be gradually taught the discipline of sitting still and paying attention to the teacher for longer lengths of time. Also I personally believe that the little boy who was interested in what everybody else was doing was exhibiting a good personality trait. This example exemplifies how subjective labeling can be.

In summary, we need to address the problem of over-identification and implement scientifically proven teaching methods. Our schools are the only institution entrusted to attend to the academic needs of our children and their mission must not be diluted. I urge this committee to do everything in its power to get schools out of the business of labeling children and back to the job of teaching. Thank you.

STATEMENT of

Marie E. Gryphon, J.D.
Policy Analyst, Center for Educational Freedom
The Cato Institute

before the

Subcommittee on Education Reform
United States House of Representatives

Reform Of The Individuals With Disabilities In Education Act Is Necessary And Possible

Good afternoon Mr. Chairman, and thank you for inviting me to be here today to discuss reform of the Individuals with Disabilities in Education Act.

As you know, the Act was passed in 1975 as part of an important social movement to end discrimination against children with disabilities, and bring them into mainstream society. Since then, American government and American civil society have made laudable strides towards equal treatment and inclusion of disabled individuals. IDEA has helped to open the doors of public schools to disabled children. However, in its present form IDEA has been a failure when it comes to the thing that parents now say they need most: peaceful and efficient delivery of high-quality educational services. Instead, IDEA holds states hostage to a failed "dispute resolution" structure that is wasteful, harmful, and unfair.

IDEA mandates a complex series of meetings, procedures and paperwork related to each disabled child in order to determine two things: how much money will be spent on that child's educational program, and what that educational program will consist of. The result is ostensibly an "Individual Education Plan." The size and nature of this entitlement is the product of often lengthy, sometimes heated negotiation between parent and school.

If parents remain unhappy with their child's Plan, they must request a due process review of the school's decision. The Due Process process often takes a year or longer, and requires many of the accouterments of a legal proceeding – lawyers, experts, a professional hearing officer and a verbatim transcript. Following this process, an unhappy parent with any fight left in him may sue his child's school district in federal court for failure to provide an ill-defined "appropriate" education.

Like so many federal programs, IDEA has often harmed the very people it was intended to help. It has ensnared children, their parents, their teachers and their schools in perennial conflicts that destroy working relationships while wasting billions of dollars dedicated to procedural compliance and litigation. I mentioned earlier that the IDEA-mandated dispute resolution process is wasteful, harmful, and unfair. While strong criticism, each of these indictments is literally true.

The dispute resolution process is wasteful because it requires regulatory compliance to the detriment of education. The Act's procedures are so Byzantine that special education teachers spend a quarter to a third of their time filling out paperwork and performing other required chores. Despite these Herculean efforts, experts have testified before this Committee that all 50 states and the District of Columbia remain out of compliance with IDEA.

IDEA trial lawyers have found that proving procedural non-compliance can result in generous fee awards. Because the Act defies any human organization to comply with its myriad demands, they have no shortage of cases.

Accordingly, IDEA's dispute resolution process is wasteful, probably to the tune of about $7 billion dollars each year. Money earmarked for education is spent instead on paperwork and posturing necessary to battle parents and their lawyers in an artificial war.

In addition to being wasteful, the Act's dispute resolution process is harmful – to students, to parents, and to teachers. Students have demonstrated insufficient academic progress since IDEA's enactment, while parents wear themselves out attempting to navigate the Act's procedures. Special education teachers are literally driven to quit the profession. Excessive paperwork and too many meetings, both required by the Act, are the top two reasons they give for quitting their jobs.

Worse, however, is the harm IDEA has visited on the relationships between parents and educators. IDEA turns these two groups, who should be collaborating to further the interests of disabled children, into the equivalent of fighting dogs. They are specially trained to see one another as the enemy throughout the Act's cumbersome procedures.

The law nurtures acrimony between these two groups by splitting their interests. Parents understandably want as many services as possible for their children, while educators are driven by budgetary constraints to try to short-change every parent who doesn't make trouble. IDEA requires educators to present cheap and easy solutions to parents as "appropriate," and that has destroyed working relationships. Indeed, the federal government has produced a system where parents grow to trust their lawyers more than their children's teachers.

Finally, the Act's dispute resolution process is unfair. Because the law rewards savvy, aggressive navigation of procedures, and the ability to hire attorneys and experts early in the process, its benefits flow disproportionately to upper income families, while leaving low-income children underserved. Similarly disabled children are not treated equally under the Act. Upper income families are more likely to obtain private school placements for their children, and are more likely to receive special testing accommodations than their low-income counterparts.

The theme of today's hearing is that IDEA reform is "necessary and possible." I've discussed why reform is necessary. I believe meaningful reform is also possible, but will require lawmakers to reexamine some of the basic assumptions of the Act.

The single most important thing to understand about the problems I have described is that they are systemic. They are not the result of small, technical oversights in the Act, and they cannot be resolved with small, technical amendments.

Effective reform will require lawmakers consider alternatives to the dispute resolution process now at the very heart of the Act. Good education does not require parents and schools to battle each other over money and educational programming. This is a litigation mentality. Lawmakers can and should allow states to replace IDEA's failed dispute resolution mandate with a parent-empowering system of defined portable benefits as described fully in my forthcoming paper on the subject, which has been submitted for inclusion in the hearing record.

Thank you very much for your time.

Statement of Mrs. Edwina Treybig
Parent, helped draft charter for Littleton Academy and Littleton Preparatory Charter Schools
July 1, 2002

One of the greatest travesties in education today is the misuse and abuse of the Individuals with Disabilities Education Act. Indeed, it has largely become the excuse for failing to educate, without guilt, a vast number of American children. Many of these children have no disability at all, but are referred to and almost always entered into the special education programs of their local schools, regardless of whether they really qualify under IDEA. The federal law and the regulations thereof leave much to interpretation. School districts and schools are motivated to place children in special education programs for a number of reasons, not the least of which is to justify their inability or unwillingness to teach them. One would think that there would be accountability somewhere in this process, but alas, there is none. Although placing a child in special education is wrought with details and mounds of paperwork to ensure that the school is complying with the law (IDEA) and that the school will not be sued, there is no requirement that the school use effective, proven curricula in teaching these children or that they obtain any positive results at all. There is ***no*** penalty if these children make no academic progress, which commonly occurs.

These children deserve much more than is currently being provided for them. They, at minimum, have the right to be taught with curricula that have a successful research base, and that have been field-tested and revised for quality assurance and proof that they work. Shamefully, we must admit that most children who are labeled with a "learning disability" have not had the advantage of being taught with research-based materials. Indeed, if they had the benefit of being taught with materials that have been proven to work using scientific methods, they would undoubtedly have never been referred to special education in the first place.

Such effectual programs do exist and have existed for many years. Regarding reading, which is unquestionably the most important part of education, without which little else can be learned, there are programs that are proven, replicable and work for the vast majority of students, including those with learning disabilities. Characteristics of such programs are the following:

- Have been field tested and revised until they are optimally effective;
- Based on successful empirical research using scientific methods, including control groups;
- Have placement tests that reveal where the child is academically, allowing placement in the proper program and lesson so that the all-too-familiar "gaps" in the child's education never develop;
- Develop background knowledge and explicitly apply it, linking it to new knowledge;
- Use explicit step-by-step procedures allowing teachers to provide specific feedback to students when they have errors;
- Have staff development programs with trainers to teach instructors how the program is used most successfully;
- Give immediate feedback on oral reading errors so students do not develop inaccurate reading habits; all errors are corrected;
- Have a system for frequent monitoring of student progress;
- Use frequent assessment, refusing to allow educational gaps to develop;
- Address all of the ways we learn, the visual, the auditory, and the kinesthetic, all at once;

- Explicitly teach phonemic awareness, a prerequisite to learning phonics;
- Clearly and explicitly teach letter-sound correspondence;
- Thoroughly teach both comprehension and decoding, integrating them into successful reading;
- Use effective blending strategy, which models the way that sounds blend together into words, with no breaking between sounds;
- Have interactive lessons which require frequent verbal responses from students;
- Build accuracy and fluency with timed reading of passages from daily lessons;
- Permit reliable predictions about how much student progress may be anticipated for a given time period;
- Have corrective programs that fill in educational gaps rapidly;
- Prepare children for academic success in the kinds of materials that are used in academic content areas.

One such program with the above characteristics, *Direct Instruction*, has been used successfully in many schools throughout the nation. The efficacy of this program has been documented in many studies, but perhaps most dramatically documented by the U.S. Department of Education's comparison of over 20 different educational models in Project Follow Through (FT). FT was the largest most expensive educational experiment ever conducted; it ran from1967 to 1976, with further studies done until 1995. The nine-year study of disadvantaged children comparing major models of education typically used in American classrooms of yesterday and today resulted in the program "*Direct Instruction*," authored by Sigfried Englemann at the University of Oregon, scoring soundly in first place in reading, writing, math, cognitive skills as well as self-esteem. These results are really remarkable when one considers the fact that Direct Instruction was not fully implemented in any of the sites, and one of the school sites was dropped for non-implementation when the children were in first and second grade, which brought the Direct Instruction average down. Significant gains in IQ were found, as well, and longitudinal studies of Direct Instruction students following the project showed lasting effects on academic achievement, attendance, college acceptance, and reduced retention rates. Examples of successes of this program throughout the nation are attached.

I would propose that IDEA include a provision in the federal law insisting upon the use of this program or one of its equal with all children who are staffed into special education with learning disabilities. It has been proven to achieve outstanding results with all children, but most importantly with children who have been labeled "learning disabled." If the Direct Instruction program is administered as it was designed, it has been repeatedly demonstrated that no children with a 60 or above IQ will fall through the cracks. This includes students with all kinds of learning disabilities, ADD, dyslexia, etc. There are even studies of mentally retarded children making a years gain for each year in school with this carefully designed program.

A result of implementing such programs with children in special education would be immeasurable dollar savings. Children with disabilities or those wrongly placed into the system because of reading or other academic difficulties would be remediated and removed from special education in fairly short order. And, the most important result would be that these children could function admirably in the regular classroom without the embarrassment and humiliation that often accompanies their special education placements and be given a future bright with promise.

Table of Indexes

Chairman Boehner, 2, 5, 6, 8, 12, 13, 14, 15, 18, 20, 22, 24, 28, 30, 32, 38
Mr. Branstad, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, 41, 42
Mr. Castle, 5, 18, 19, 20, 26
Mr. Isakson, 22, 23, 24
Mr. Jones, 14, 18, 20, 21, 22, 26, 28, 29, 31, 32, 33, 35, 36, 38, 40, 41, 42, 43
Mr. Kildee, 7, 20, 21, 22
Mr. Miller, 4, 8, 15, 16, 17, 18
Mr. Osborne, 26, 27, 28
Mr. Payne, 38, 39
Mr. Petri, 30, 31
Mr. Roemer, 24, 25, 26
Mr. Schaffer, 35, 39, 40, 41, 42, 43
Mr. Scott, 42, 43
Mr. Tancredo, 8
Mr. Tierney, 32, 33, 34, 35
Mrs. Davis, 37, 38
Mrs. McCarthy, 35, 36, 37
Ms. Solis, 28, 29, 30

□