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MISMANAGEMENT AND CONFLICTS OF INTEREST IN THE READING FIRST PROGRAM

HEARING

BEFORE THE

COMMITTEE ON
EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 20, 2007

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MISMANAGEMENT AND CONFLICTS OF INTEREST IN THE READING FIRST PROGRAM

Friday, April 20, 2007

U.S. House of Representatives

Committee on Education and Labor

Washington, DC

The committee met, pursuant to call, at 9:00 a.m., in Room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Kildee, Payne, Scott, Woolsey, Hinojosa, McCarthy, Tierney, Kucinich, Wu, Davis of California, Grijalva, Bishop of New York, Sarbanes, Sestak, Loebsack, Hirono, Altmire, Yarmuth, Hare, Clarke, Shea-Porter, McKeon, Castle, Wilson, Kuhl, and Heller.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Alice Cain, Senior Education Policy Advisor (K-12); Fran-Victoria Cox, Documents Clerk; Sarah Dyson, Administrative Assistant, Oversight; Amy Elverum, Legislative Fellow, Education; Michael Gaffin, Staff Assistant, Labor; Jeffrey Hancuff, Staff Assistant, Labor; Ryan Holden, Senior Investigator, Oversight; Lloyd Horwich, Policy Advisor for Subcommittee on Early Childhood, Elementary and Secretary Education; Thomas Kiley, Communications Director; Ann-Frances Lambert, Administrative Assistant to Director of Education Policy; Ricardo Martinez, Policy Advisor for Subcommittee on Higher Education, Lifelong Learning and Competitiveness; Stephanie Moore, General Counsel; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Rachel Racusen, Deputy Communications Director; Theda Zawaiza, Senior Disability Policy Advisor; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; James Bergeron, Counselor to the Chairman; Robert Borden, General Counsel; Kathryn Bruns, Legislative Assistant; Steve Forde, Communications Director; Taylor Hansen, Legislative Assistant; Victor Klatt, Staff Director; Chad Miller, Professional Staff; Susan Ross, Director of Education and Human Resources Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Sally Stroup, Deputy Staff Director; and Brad Thomas, Professional Staff Member.

Chairman MILLER [presiding]. The committee will come to order.

Good morning to all the members and to the audience and to the witnesses.

The purpose of the meeting this morning is to conduct a hearing on the mismanagement and conflicts of interest in the Reading First Program.

I will begin with my opening statement.

In 2002, as part of the No Child Left Behind Act, Congress established the Reading First Program to help young children become better readers.

Under the Reading First program, the federal government provides grants to states to help them improve reading instruction. States may use this funding for a variety of purposes, including the purchase of: core reading curricula; programs to assess students' progress toward reading proficiency; and the intervention programs to help students who are falling behind in reading.

In September 2006, the Education Department's inspector general issued the first six reports on the implementation of the Reading First Program. I am pleased that the inspector general is joining us today to discuss some of his findings. It is critically important that the committee has this opportunity to hear directly from the inspector general about them.

The inspector general found a number of ways in which the Department of Education failed to act in the best interests of the taxpayers, the states, the schools and schoolchildren. The inspector general's first report showed that, in a number of cases, the Education Department officials and contractors with deep financial and personal connections to specific reading products inappropriately promoted those products over others.

Rather than provide an even playing field on which high-quality programs can compete based upon the just merits for business with the states, these officials and contractors created an uneven playing field that favored certain products. Indeed, we know of examples where states were essentially bullied to use those products in order to receive Reading First money.

This uneven playing field was obviously unfair to the companies and the publishers that developed products that were out of favor with the Department of Education, but it was also unfair and costly to the states and school districts that were denied the opportunity to use their first-choice reading curricula and assessments.

Today, we are going to hear from the former Reading First director Chris Doherty, who figured prominently in the inspector general's first report. We are also going to hear from reading experts who served on the Assessments committee that was set up to offer advice about which reading assessments the states could use under the law.

We are going to learn about those experts' bias for specific reading assessment products and evaluate whether they were capable of being independent brokers in deciding which programs should receive funding under Reading First.

The purpose of this hearing is not to evaluate the effectiveness or strengths or weaknesses of the Reading First Program. I support the Reading First Program, as do many of my colleagues on both sides of the aisle. As the committee works to reauthorize No Child Left Behind, we will evaluate the program to see what we can do to improve it.

But there is no question that this mismanagement and these conflicts of interest undermined the program and the public's confidence in it. In reauthorization, this committee will act on legislation to explicitly prohibit these kinds of conflicts.

When states and school districts and schools are bullied into using reading programs and assessments that were not their first choice or had a proven track record, then it meant that the officials in Washington, D.C., were overriding the informed decisions of local educators about what is best for their own students.

Too many times in the Bush administration, we have seen examples of officials abusing the public trust and misusing tax dollars, and we have seen way too many examples of cronyism and conflicts of interest that have undermined the government's effectiveness.

From the multibillion-dollar contracts at Halliburton in Iraq to the wasteful spending and gross mismanagement in the wake of Hurricane Katrina, this administration has simply failed to be accountable to taxpayers and the public.

Now it appears that we can add Reading First—on which we have spent roughly $6 billion since 2002—to a long and growing list of instances where the administration is operating outside of the law, unaccountable to Congress and the American people.

I do appreciate our witnesses who are here today and are prepared to discuss their roles in the implementation of Reading First. I want to assure them that the committee will give them each an opportunity to voice their perspective on this scandal. We consider their participation to be extremely informative and look forward to their testimony.

With that, I would like to recognize the senior Republican of the committee, Mr. McKeon from California.

Mr. MCKEON. Thank you, Mr. Chairman, for convening this hearing.

As you know, we are in the midst of an extensive series of hearings on the No Child Left Behind Act, a series that began about a year ago when you and I announced our aggressive plan to lay the background for reauthorization. While today's hearing may be structured differently than many of the NCLB hearings we have held during the past year, the subject at hand today is just as important to the law's reauthorization as the subjects of any of the other hearings we have had during this series.

Mr. Chairman, you and I and many other members of this committee embraced Reading First when we crafted NCLB in 2001 because we agreed it was time for our nation to commit to scientifically based reading instruction as part of our broader effort to provide a high-quality education to every single child.

Six years later, the program appears to be on its way to achieving the results we had hoped for. Knowing this is welcome news, considering the fact that we spend a billion dollars a year on this program. Though the outcomes of Reading First have been strong, I had hoped that the Department of Education would have been more effective in managing and staffing this program.

As all of us know, however, for a period of years, the management quality of this program did not rise to the high level of the results it has consistently produced for our nation's students. The responsibility for these shortcomings lies squarely at the feet of the

Department of Education, a responsibility the secretary accepted quickly and without hesitation.

Now it is our responsibility to provide thorough and fair congressional oversight on this issue. My goal for this hearing—and any others that may follow—is very simple, and I hope my colleagues share it: to make the Reading First Program even better.

Today, we will look more deeply into the management of this program, how it has been assessed and, most importantly, what we can do to ensure the Department of Education corrects problems identified by its inspector general and by this committee.

Yesterday, in order to begin this process and ensure we remain focused on improving the Reading First Program, I introduced comprehensive legislation that takes key recommendations of the inspector general and makes them the law of the land.

The Reading First Program is too important and too successful to allow it to fall prey to management questions. By codifying many of the inspector general's recommendations, we will ensure these management issues are dealt with in the law itself so the program can continue to achieve positive results in practice.

Among a host of other reforms, the Reading First Improvement Act will require the secretary of education to explicitly screen for conflicts of interest among Reading First peer reviewers; ensure that any Reading First contracts the Education Department enters into include provisions requiring contractors and subcontractors to screen for potential conflicts of interest; and reinforce the provisions found in NCLB and other federal laws that prohibit the Department of Education from dictating curriculum to local schools.

Many of these reforms already have been embraced by the Department of Education, and I applaud that. However, it is our responsibility to ensure that they remain permanent, regardless of which administration is in office, and for that reason, it is best addressed legislatively as part of the NCLB's reauthorization.

Mr. Chairman, I believe these are common-sense steps we can get behind and build upon in a bipartisan way. I urge my colleagues to enjoy me in supporting the Reading First Improvement Act and setting these important reforms into motion.

When the first inspector general report was released last fall, I committed to a thorough and fair oversight hearing of Reading First management, and now that the investigation is complete, I am pleased that we can begin that process.

Again, Mr. Chairman, I thank you for holding this hearing today.

And thank you to each of our witnesses for joining us this morning.

Chairman MILLER. I thank the gentleman.

I want to say that pursuant to committee rule 12, any member may submit an opening statement in writing which will be made part of the permanent record, and without objection, all members will have 14 days to submit additional materials for the hearing record.

I would just to comment on Mr. McKeon's statement. I appreciate his recommendations and look forward to working with him on those. I think it shows that the inspector general's report has already had an impact and has provided some guidance to us about what we can do to remedy the situation that is the subject of this

hearing. I appreciate his contribution in that effort to start putting forth those reforms.

Before proceeding to introducing our witnesses, let me lay out the process we will follow generally in investigative hearings and specifically in this hearing.

An investigative hearing differs from a legislative or oversight hearing in that investigations may involve allegations of public officials acting in an official capacity or private citizens or any of these who have engaged in certain conduct that may suggest the need for legislative remedy.

Because of the importance of getting complete, full and truthful testimony, witnesses in investigative hearings before the committees of Congress are sworn in. Our witnesses will be sworn in today.

I understand that some witnesses, as is their right, are accompanied by counsel. While counsel are welcome to advise their clients, they may not coach them or answer questions on their behalf.

House rule 11(2)(k)(4) authorizes the chairman of the committee to punish breaches or order, decorum or professional ethics on part of counsel by censure or exclusion from the hearings or the committee may cite offenders to the House for contempt. I will not tolerate tactics designed to disrupt the purposes of this hearing.

To ensure that we have ample opportunity to flesh out all the relevant facts in the record, I am exercising my prerogative as chair pursuant to committee rule (2)(b) to extend the 5-minute rule for myself and Mr. McKeon. Following the witnesses' testimony, we will each engage in two 15-minute rounds of questioning, after which members may participate in the 5-minute rule.

I would like now to introduce our panel of witnesses.

First is Mr. John P. Higgins. He is the inspector general of the U.S. Department of Education. Mr. Higgins has served in a number of senior management positions in the Department of Education and its predecessor, the Department of Health and Education and Welfare during more than 38 years of federal service. He became the deputy inspector general of the Department of Education in January 1996 and was nominated by President Bush on September 18, 2002, to become inspector general. He will be accompanied by Mr. Rasa, also of the inspector general's office.

Mr. Edward Kame'enui—is it close?—currently serves as a commissioner for special education research at the Institute of Education Sciences at the Department of Education. Prior to joining IES, Dr. Kame'enui worked at the University of Oregon where he was a faculty member for 17 years. During his tenure with the University of Oregon, he directed and co directed numerous state research and training grants, including Oregon Reading First Center and the Western Regional Reading First Technical Assistance Center. He has served as a multitude of national committees, review panels and research boards in general and in special education, and has published extensively. Mr. Kame'enui holds a bachelor's of arts at Pacific University and holds a master's and Ph.D. in special education from the University of Oregon.

Christopher Doherty worked for the U.S. Department of Education from 2004 to 2006 as a program director for Reading First. Prior to joining the department, Mr. Doherty served as executive

director of the Baltimore Curriculum Project, a nonprofit organization that operates inner city public charter schools.

Dr. Roland Good is currently an associate professor at the University of Oregon. His focus includes early literacy research, measurement statistics and research design. For the past 19 years, he has led a program of research and development culminating in the Dynamic Indicators of Basic Early Literacy Skills, known as DIBELS for the purposes of this hearing, and the DIBELS data system. He is also the principal and co-founder of Dynamic Measurement Group, an educational company that, among other things, provides professional development on DIBELS. Mr. Good holds a doctorate from Pennsylvania State University.

Dr. Deborah Simmons is a professor of special education at Texas A&M University. She was a speech pathologist and a special educator in the public schools for 10 years prior to earning her doctorate degree in special education and reading. She conducts research to prevent and intercept reading difficulties. Dr. Simmons has published extensively in her areas of expertise.

Starr Lewis is the associate commissioner of the Office of Teaching and Learning in the Kentucky Department of Education. The Office of Teaching and Learning is responsible for curriculum areas for early childhood through high school. As associate commissioner, Ms. Lewis is responsible for leading the state's efforts during the Reading First grant-writing phase and implementation. Ms. Lewis has received a BA from the University of Kentucky and her master's in teaching from the University of Louisville. Before joining the Kentucky Department of Education, Ms. Lewis taught English and psychology for 17 years.

For those of you who have not testified here before, let me explain the lighting system that will be on in front of you. When you begin your testimony, the light will be green, and when you see a yellow light, it means you have roughly 1 minute to wrap up your remarks in that remaining time. When the light turns red, your time has expired and you need to conclude your testimony.

Please be certain, as you testify, to turn on and speak into the microphone in front of you.

At this point, I would like each of you to stand and to raise your right hand for the purpose of being sworn before the committee. [Witnesses sworn.]

Mr. Higgins, we will now hear from you. Welcome to the committee, and thank you for your work.

TESTIMONY OF JOHN P. HIGGINS, INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION

Mr. HIGGINS. Mr. Chairman and members of the committee, thank you for the opportunity to testify on the work of my office.

Reading First is a $1-billion-per-year program that was established to provide kindergarten through third grade reading programs based on scientifically based reading research. The goal of the program is to ensure that every student can read at grade level or above by the end of the third grade.

In May of 2005, my office began receiving allegations about Reading First. The allegations indicated that the department was promoting and excluding specific programs and assessments, as

well as using consultants with ties to these programs and assessments. As a result, we decided to perform a series of six reviews. My comments today will focus on the work we performed at the department.

To put our work in context, it is important to understand that the Department of Education's Organization Act prohibits department officials from exercising any control over the curriculum of a school. In addition, the No Child Left Behind Act includes a similar prohibition.

Through our work, we found that the department: one, appeared to have inappropriately influenced the use of certain programs and assessments; two, failed to comply with the statutory requirements and its own guidance; three, obscured the requirements of the statute; and four, created an environment that allowed real and perceived conflicts of interest.

First, with regard to the inappropriate influence, we found that the department allowed certain activities that led, in part, to a perception that there was an approved list of reading programs and assessments. Let me highlight for you some of the activities that led to this perception.

The department and the National Institute for Literacy sponsored three Reading Leadership Academies. These academies were designed to assist the states in preparing Reading First applications. The department exercised control over the content and the presenters for the academies.

Of 10 "Theory to Practice" presentations, six contained information on the Direct Instruction Program.

Chairman MILLER. Mr. Higgins, if I might, if you could pull your microphone a little bit closer to you?

Mr. HIGGINS. Okay.

Chairman MILLER. Thank you.

Mr. HIGGINS. Let's see. Where was I?

Of the 10 "Theory to Practice" presentations, six contained information on the Direct Instruction Program. The luncheon speaker for two of the academies also focused on Direct Instruction. Some academy participants expressed concerns about the content of the sessions. One participant indicated, "I felt like it was a Direct Instruction sales pitch."

The Reading First statute requires the use of reading assessments. Each participant at the Reading Leadership Academies was provided a handbook that included an article featuring one reading assessment called DIBELS. Later, the department published a guidebook, which also contains an article featuring DIBELS.

While other assessment instruments were listed in the handbook and the guide, only DIBELS was featured in an article in both books. Not surprisingly, 43 states indicated that they would use DIBELS as one of their assessments.

In addition, we found that the department inappropriately arranged to have a report on assessments publicized. The National Institute for Literacy contracted with the University of Oregon to perform a review of assessments. Out of the hundreds of assessments available for the review, the University reviewed 29 and found 24 of them to be acceptable. Seven of the 24 were tied directly to people working on the review.

The National Institute for Literacy decided not to issue their final report because it might appear as if they were endorsing products. However, the department, without coordinating with the National Institute for Literacy, directed the author of the report, who worked at the University of Oregon, to post it on the university's Web site.

We also identified instances where department officials intervened with regard to reading programs and assessments being selected by states. In some instances, department officials and their representatives worked to influence states to select specific programs or assessments. These instances of intervention concerned Direct Instruction and DIBELS.

In other instances, the department officials worked to influence states to not select specific programs. These instances of intervention included programs such as Rigby, Reading Recovery and Wright Group. However, the department never documented its assertions that these programs were not aligned with scientifically based reading research.

Second, we found that the department did not comply with the Reading First statute or its own guidance. Again, let me highlight for you the information that led us to this conclusion.

The Reading First statute called for a balanced panel to review applications. The department and three other organizations were to each select at least three experts for the panel. Senior department officials decided to use subpanels for the review process and to create an advisory and oversight panel" with three representatives from each of the organizations required by the statute.

However, the advisory and oversight panel concept was never implemented. As a result, the process used by the department was not in accordance with the requirements of the statute, since none of the subpanels created by the department included representation from each of the required organizations.

We also identified evidence that the Reading First director personally nominated three individuals for sub-panels who had professional connections to Direct Instruction. These three individuals reviewed 23 state applications. In choosing individuals to serve on the subpanels, the Reading First director showed a strong bias for those he knew supported Direct Instruction and a strong bias against those who favored Reading Recovery.

We also found problems with how the department communicated the panelists' comments. Although the panelists adequately documented their reasons for stating that an application was not ready for funding, this documentation was not provided to the states as called for by the department's guidance. Instead, the department created a document in which it changed panelists' comments, left off comments and added comments of its own. The new document was the only document that was provided to the states.

Third, we found that the department obscured the requirements of the statute by inappropriately including and excluding standards in the application criteria. Emails from the Reading First director indicated that this was done in order to help the states understand what he wanted Reading First classrooms to look like.

Finally, the department did not place an appropriate level of emphasis on issues of conflict of interest. This can be seen in two specific areas.

First, the screening process that the department created for the subpanels that reviewed applications was not effective. The department did not ask panelists about their impartiality. In addition, the department did not review the panelists' resumes for potential conflicts of interest.

Second, the department's contractor, RMC Research Corporation, did not adequately address conflicts of interest. The department used RMC to provide technical assistance to states and to assist the states in preparing applications. However, RMC did not ensure that the organizational conflict of interest clauses were included in the agreements of the consultants.

In addition, neither the department nor RMC adequately vetted technical assistance consultants for potential biases. As a result, we noted connections between individuals and organizations that presented an appearance of impaired objectivity.

In conclusion, our work showed that the department did not comply with the Reading First statute regarding the composition of the application review panel and the criteria for acceptable programs. Further, the department's actions created an appearance that it may have violated statutory provisions that prohibit it from influencing the curriculum of schools.

However, because department officials often justified their bias against particular programs by saying the programs were not aligned with scientifically based reading research, I cannot say with certainty that these statutes were violated since we did not assess whether the particular programs were based on scientifically based research or not.

Based on our work, we made a number of recommendations to the department, which it accepted. We also suggest that the department consider clarifying whether reading programs need to have scientific evidence of effectiveness in order to be eligible for funding under the Reading First Program and clarifying conflict of interest requirements in federally funded programs.

That concludes my statement, and I would be happy to answer any questions.

[The statement of Mr. Higgins follows:]

Prepared Statement of John P. Higgins, Jr., Inspector General, U.S. Department of Education

Mr. Chairman and Members of the Committee: thank you for the opportunity to testify on the work of my office.

Reading First is a $1 billion per year program that was established to provide kindergarten through third grade reading programs based on scientifically based reading research. The goal of the program is to ensure that every student can read at grade level or above by the end of the third grade.

In May 2005, my office began receiving allegations about Reading First. The allegations indicated that the Department was promoting and excluding specific programs and assessments, as well as using consultants with ties to these programs and assessments. As a result, we decided to perform a series of six reviews. My comments today will focus on the work we performed at the Department.

To put our work in context, it is important to understand that the Department of Education's Organization Act prohibits Department officials from exercising any control over the curriculum of a school. In addition, the No Child Left Behind Act includes a similar prohibition.

Through our work, we found that the Department:

1) appeared to inappropriately influence the use of certain programs and assessments;

2) failed to comply with statutory requirements and its own guidance;

3) obscured the requirements of the statute; and

4) created an environment that allowed real and perceived conflicts of interest.

First, with regard to inappropriate influence, we found that the Department allowed certain activities that led, in part, to a perception that there was an approved list of reading programs and assessments. Let me highlight for you some of the activities that led to this perception:

The Department and the National Institute for Literacy sponsored three Reading Leadership Academies. These Academies were designed to assist the states in preparing Reading First applications. The Department exercised control over the content and presenters for the Academies. Of 10 "Theory to Practice" presentations, 6 contained information on the Direct Instruction program. The luncheon speaker for two of the Academies also focused on Direct Instruction. Some Academy participants expressed concerns about the content of the sessions. One commenter indicated, "I felt like I was in a Direct Instruction sales pitch all day."

The Reading First statute requires the use of reading assessments. Each participant at the Reading Leadership Academies was provided with a Handbook that included an article featuring one reading assessment called DIBELS. Later, the Department published a Guidebook, which also contained the article featuring DIBELS. While other assessment instruments were listed in the Handbook and Guidebook, only DIBELS was featured in an article in both books. Not surprisingly, 43 states indicated that they would use DIBELS as one of their assessments.

In addition, we found that the Department inappropriately arranged to have a report on assessments publicized. The National Institute for Literacy contracted with the University of Oregon to perform a review of assessments. Out of the hundreds of assessments available for review, the University reviewed 29 and found 24 of them to be acceptable; 7 of the 24 were tied directly to people working on the review. The National Institute for Literacy decided not to issue the final report because it might appear as if it were endorsing specific products. However, the Department, without coordinating with the National Institute for Literacy, directed the author of the report, who worked at the University of Oregon, to post it on the University's website.

We also identified instances where Department officials intervened with regard to reading programs and assessments being selected by states. In some instances, Department officials and their representatives worked to influence states to select a specific program or assessment—these instances of intervention concerned Direct Instruction and DIBELS. In other instances, Department officials worked to influence states to not select specific programs—these instances of intervention included programs such as Rigby, Reading Recovery, and Wright Group. However, the Department never documented its assertions that these programs were not aligned with scientifically based reading research.

Second, we found that the Department did not comply with the Reading First statute or its own guidance. Again, let me highlight for you the information that led us to this conclusion:

The Reading First statute called for a balanced panel to review applications. The Department and three other organizations were to each select at least three experts for the panel. Senior Department officials decided to use sub-panels for the review process and to create an "Advisory and Oversight Panel" with three representatives from each of the organizations required by the statute. However, the Advisory and Oversight Panel concept was never implemented. As a result, the process used by the Department was not in accordance with the requirements of the statute, since none of the sub-panels created by the Department included representation from each of the required organizations.

We also identified evidence that the Reading First Director personally nominated 3 individuals for the sub-panels who had professional connections to Direct Instruction—these 3 individuals reviewed 23 state applications. In choosing individuals to serve on the sub-panels, the Reading First Director showed a strong bias for those he knew supported Direct Instruction and a strong bias against those who favored Reading Recovery.

We also found problems with how the Department communicated the panelists' comments. Although the panelists adequately documented their reasons for stating that an application was not ready for funding, this documentation was not provided to the states, as called for by the Department's guidance. Instead, the Department created a new document in which it changed panelists' comments, left off comments,

and added comments of its own. This new document was the only document that was provided to the states.

Third, we found that the Department obscured the requirements of the statute by inappropriately including and excluding standards in the application criteria. Emails from the Reading First Director indicated that this was done in order to help the states understand what he wanted Reading First classrooms to look like.

Finally, the Department did not place an appropriate level of emphasis on the issue of conflict of interest. This can be seen in two specific areas:

First, the screening process the Department created for the sub-panels that reviewed applications was not effective. The Department did not ask panelists about their impartiality. In addition, the Department did not review the panelists' resumes for potential conflicts of interest.

Second, the Department's contractor, RMC Research Corporation, did not adequately address conflict of interest issues. The Department used RMC to provide technical assistance to states and to assist the states in preparing applications. However, RMC did not ensure that organizational conflict of interest clauses were included in its agreements with consultants. In addition, neither the Department nor RMC adequately vetted technical assistance consultants for potential bias. As a result, we noted connections between individuals and organizations that presented the appearance of bias and impaired objectivity.

In conclusion, our work showed that the Department did not comply with the Reading First statute regarding the composition of the application review panel and criteria for acceptable programs. Further, the Department's actions created an appearance that it may have violated statutory provisions that prohibit it from influencing the curriculum of schools. However, because Department officials often justified their bias against particular programs by saying the programs were not aligned with scientifically based reading research, I cannot say with certainty that these statutes were violated since we did not assess whether particular programs were based on scientifically based reading research.

Based on our work, we made a number of recommendations to the Department, which it accepted. We also suggest that Congress consider clarifying whether reading programs need to have scientific evidence of effectiveness in order to be eligible for funding under Reading First and clarifying conflict of interest requirements in federally funded programs.

This concludes my statement. I would be happy to answer any questions.

Chairman MILLER. Thank you very much for your statement. And, again, as I said earlier, thank you very much for all of your work and the work of your office and staff on the reports that you did on Reading First.

Mr. Kame'enui, your statement?

TESTIMONY OF EDWARD KAME'ENUI, COMMISSIONER OF THE NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH, U.S. DEPARTMENT OF EDUCATION

Mr. KAME'ENUI. Chairman Miller, Ranking Member McKeon, distinguished members of the committee, I want to thank the committee for asking me to testify today to explain my involvement in the design and implementation of the Reading First Program.

The Reading First legislation introduced a transforming requirement. Instead of allowing states to receive funds based solely on need, this law asked states to describe how they would use evidence or scientifically based reading research to mount a systematic and sustained effort to improve literacy in the nation's most challenging schools.

This immense effort required clear and unflinching leadership which it received because it asked states, districts and schools to take inventory of their current efforts in teaching beginning reading and, in doing so, either change or modify what they were doing. It meant that states and school districts competing for Reading

First funds had to select and implement reading assessments and curricula based on scientific evidence.

This transformation from entitlement to scientific accountability, akin to a Kuhnian paradigmatic shift, has been difficult for everyone—teachers, administrators, school board members and other stakeholders in states, districts and schools, including the U.S. Department of Education.

After all, how were states to know what beginning reading assessments were valid, reliable and scientifically based? How were they to know which beginning reading programs were based on the best available science? Whose science and what evidentiary standards were education officials to use in carrying out these basic teaching and administrative tasks?

To ensure the success of this initiative, it was imperative that answers to these questions be provided in a short and condensed period of time to comply with the timetable provided in the legislation. As such, it was necessary to rely on researchers from around the country who possessed the knowledge and expertise to do the work.

With perfect hindsight and given the scope of the ongoing inquiries it is now clear that more should have been required by the U.S. Department of Education and others involved in the program, including me, to prevent the issues that have arisen.

My involvement in the Reading First Program began in August 2001. At that time, I was asked by the Department of Education through a colleague to put together a committee charged with the responsibility of developing both a process and a product that would provide assistance to state and local education agencies in selecting reading assessment measures.

To respond to this request, I selected seven researchers to develop and apply a process, criteria, decision rules and procedures for identifying reading assessment instruments designed for screening, diagnosis, progress monitoring and outcome evaluation. In a period of 8 months, September 2001 to May 2002, my colleagues and I completed this unforgiving task.

In doing so, the committee reviewed more than 100 assessment measures and selected 29 they judged to be the most frequently used instruments and readily available for review. In selecting some of the best experts in the country, it is not surprising that those experts would also be authors of popular and innovative assessment tools, which the committee as a whole selected to review.

It is also important to note that it was our understanding at the time that more assessment measures would be reviewed and that technical assistance to support states in the continued review and selection of assessment tools would be ongoing.

What lessons did we learn from this experience?

On the technical side of this experience, we learned that if high and rigorous standards were maintained for judging trustworthiness, very few tests would meet those standards. Because so many tests failed to provide information about the required technical features, the committee adopted a set of minimum standards of trustworthiness with the goal of providing the field with the best of what was available at the time.

On the non-technical side, I want to note that at the outset we took steps to avoid any conflict of interest, even though we received no guidance, explicit or implicit, from the contractor or the U.S. Department of Education in this regard. As researchers, we employed traditional academic standards in reviewing and adjudicating the research and technical evidence.

The standards we used required each committee member to disclose his or her proprietary interest in assessment instruments and to not review those particular instruments. Moreover, committee members did not discuss as a group the ratings of any of the assessments. In addition, I would like to note that neither I, nor any member of the committee that I know of, violated the conflict of interest procedures that we had established.

However, knowing now what various questions have been raised about the appearance of conflicts, it is apparent that we should have required a different set of standards than the traditional academic standards, such as formalized procedures for defining and identifying conflicts and even appearances of conflicts.

In conclusion, it is my sincere hope that issues regarding conflicts of interest procedures that have arisen in the implementation of Reading First do not irreparably tarnish this important and unprecedented federal program. These issues should not diminish the supreme importance in continuing to use rigorous, scientifically based evidence in making educational decisions.

Thank you.

[The statement of Mr. Kame'enui follows:]

Prepared Statement of Edward J. Kame'enui, Professor, College of Education, University of Oregon

I want to thank the Committee for asking me to testify today to explain my involvement in the "design and implementation of the Reading First Program." I do so today with the genuine desire that my testimony will assist this Committee both in learning the true facts behind the development of some important aspects of this Program and in instituting any necessary changes to ensure the continued viability of this important and unprecedented federal program.

The Reading First legislation introduced a transforming requirement, instead of allowing States to receive funds based solely on need, for the very first time this law asked States to describe how they would use evidence or "scientifically based reading research" to mount a systematic and sustained effort to improve literacy in the nation's most challenging schools. This immense effort required States, districts and schools to take inventory of their current efforts in teaching beginning reading, and in doing so, either change or modify what they were doing. In some cases, this change occurred at an unprecedented scale that provoked a transformation in the professional and ideational culture of schools, districts and, in some cases, states. It meant that states and school districts competing for Reading First funds had to select and implement reading assessments and curricula based on scientific evidence. This transformation from entitlement to "scientific" accountability akin to a Kuhnian paradigmatic shift, has been difficult for everyone—teachers, administrators, school board members, and other stakeholders in States, districts, and schools, including the U.S. Department of Education. After all, how were States to know what beginning reading assessments were valid, reliable and scientifically based? How were they to know which beginning reading programs were based on the best available science? Whose science and what evidentiary standards of science were education officials to use in carrying out these basic teaching and administrative tasks?

To ensure the success of this initiative, it was imperative that answers to these questions be provided in a short and condensed period of time to comply with the timetable provided in the legislation. As such, it was necessary to rely on researchers from around the country who possessed the knowledge and expertise to do the work. With perfect hindsight, and given the scope of the ongoing inquiries, it is now clear that more should have been required by the U. S. Department of Education

and others involved in the program, including me, to prevent the issues that have arisen.

My involvement in the Reading First Program began in August 2001. At that time, I was asked by the Department of Education, initially through a colleague, to put together a committee charged with the responsibility of developing both a process and a product that would provide assistance to State and local educational agencies in selecting "screening, diagnosis, and classroom-based instructional reading assessments" called for by the Reading First legislation. To respond to this request, I selected seven researchers to develop and apply a process, criteria, decision rules and procedures for identifying reading assessment instruments designed for screening, diagnosis, progress monitoring, and outcome evaluation. The need for such a committee may strike those uninitiated to education as peculiar. After all, one could ask, wasn't this information already established, available and used widely? The short answer is no.

In a period of eight months (September, 2001 to May, 2002), my colleagues and I developed operational definitions of the five "essential components of reading instruction" as specified in the 2002 No Child Left Behind (NCLB) legislation.[1] These five essential components are phonemic awareness, phonics, vocabulary, fluency and reading comprehension. We also developed operational definitions of the four ways to evaluate how well children read, which include screening, diagnosis, progress monitoring, and outcome evaluation. The five essential components of reading instruction and the four purposes of assessment also had to be considered in the context of four grade levels—Kindergarten through Grade 3 (K-3). In addition, we developed a 34-page coding form that permitted independent reviewers to code the technical information found in the test manuals of the reading assessment measures. As an aside, the independent reviewers spent an average of 6-12 hours coding the technical information for each of these tests. Finally, using the coded information, six members of the committee were paired into three teams to judge the "trustworthiness" or sufficiency of the technical information for each of the assessment measures. To select the assessment measures, the Committee reviewed more than a 100 assessment measures and selected 29 they judged to be the most popular and frequently used instruments and readily available for review. In selecting some of the best assessment experts in the country, it is not surprising that those experts would also be authors of popular and innovative assessment tools, which the committee as a whole selected to review. It is also important to note that it was our understanding at the time that more assessment measures would be reviewed and that technical assistance to support states in the continued review and selection of assessment tools would be ongoing.

What lessons did we learn from this experience? On the technical side of this experience, we learned that if high and rigorous standards were maintained for judging trustworthiness, very few tests would meet those standards. Because so many tests failed to provide information about the required technical features, the committee adopted a set of minimum standards of trustworthiness with the goal of providing the field with the best of what was available. Thus, measures were deemed to be trustworthy if they provided relevant data that met the minimal requirements.

On the non-technical side, I want to note at the outset that we took steps to avoid any conflicts of interests, even though we received no guidance (explicit or implicit) from the contractor or the U.S. Department of Education in this regard. As researchers, we employed traditional academic standards in reviewing and adjudicating the research and technical evidence. The standards we used required each committee member to disclose his or her proprietary interest in assessment instruments, and to not review those particular instruments. Moreover, committee members did not discuss as a group the ratings of any of the assessment measures. In addition, I would like to note that neither I, nor any member of the committee that I know of, violated the conflicts of interests procedures that we had established. Instead, each Committee member recognized the importance of this work and went to extraordinary measures to ensure not only that the work was conducted and completed with integrity in a very short period of time, but that it was done without any conflicts of interests. However, knowing now the various questions that have been raised about the appearance of conflicts, it is apparent that we should have required a different set of standards than the traditional academic standards. There should have been more formalized procedures for defining and identifying conflicts and even appearances of conflicts. Moreover, we should have addressed those in as transparent a manner as possible to ensure the integrity of the process.

In the future, to guard against the perception of conflicts of interests, I recommend that an independent entity, such as the National Research Council of the

[1] See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 20 U.S.C. § 6368 (2007).

National Academy of Sciences, be charged with the oversight responsibility of this task. I further recommend that the Review Panel be comprised of researchers and technical experts who do not have any proprietary interests in any assessment tools, protocols, and websites or test publishing companies. In addition, I recommend that a clear and unambiguous set of guidelines with concrete examples be provided on what constitutes conflicts of interests. Such a process and guidance should ensure that real and perceived conflicts of interests are not an issue.

In addition to my work on the Assessment Committee, I also served as the Director of the Oregon Reading First Center from September 1, 2002 to July 1, 2005, a period of 2 years and 10 months, and Director of the Western Regional Reading First Technical Assistance Center (WRRFTAC) from October 1, 2003 to July 1, 2005, a period of 1 year and 9 months. The Oregon Reading First Center was responsible for providing technical assistance to the State of Oregon's Reading First grant program. In contrast, the Western Regional Reading First Technical Assistance Center was responsible for providing technical assistance to the western states including, as I recall, Minnesota, Wisconsin, North and South Dakota and American Samoa. As Director of these two technical assistance centers, I was responsible for ensuring that States received technical support that reflected the most current scientifically based reading research available. Again, even in the absence of any explicit or implicit guidance from the U.S. Department of Education or the contractors on what constituted a conflict, we took traditional academic steps to avoid any conflicts of interests in providing technical assistance to States. For example, as an author of a reading intervention program for Kindergarten children, I never promoted or provided technical assistance on that program. Moreover, neither I, nor any staff members that I know of, violated the conflicts of interests standards that were common to our professional practice. Instead, staff members took significant measures to ensure not only that the work was conducted with respect and integrity, but also that it was done without any conflicts of interests.

Much of the work of these technical assistance centers involves translating research into practical and useable instructional practices that teachers and administrators can implement immediately, and at scale. There is no textbook or driver's manual for doing this work, and doing it in a way that is accessible, sensible and engaging for teachers and administrators who face the realities everyday of teaching struggling readers to read. As such, my colleagues and I relied on our knowledge of the reading research and the collective experience we had gained from our previous work. Thus, for the record, I want to note the experience that I brought to my role as Director of these two technical assistance centers. For example, I was one of 17 members that served on the National Academy of Sciences' Committee on the Prevention of Reading Difficulties in Young Children, which produced the first "consensus" report on reading problems in 1998, a report that pronounced, yet again, the importance of the teacher's role in teaching children to read in an alphabetic writing system. In addition, my colleague, Deb Simmons, and I wrote the Reading/Language Arts Curriculum Framework K-12 for the State of California, which served as a major influence at the time on publishers and other state reading initiatives. I was also actively involved in the implementation of the predecessors of Reading First, the Comprehensive School Reform Act, and the Reading Excellence Act, which were hallmarks of the Clinton Administration. Finally, some of the materials we used in our Reading First work were developed as part of a 10-year technical assistance center that I co-directed with my colleague, Dr. Douglas W. Carnine, from 1991 to 2002. This center, called the National Center to Improve the Tools of Educators (NCITE), was funded by the Office of Special Education Programs and had as its primary mission working directly with publishers and developers of reading, language arts and mathematics curricula to ensure that the needs of students with disabilities and low performers were considered in the design and architecture of these materials.

In conclusion, it is my sincere hope that issues regarding conflicts of interest procedures that have arisen in the implementation of Reading First do not irreparably tarnish this important and unprecedented federal program. Without doubt, these issues do not diminish the supreme importance in continuing to use rigorous, scientifically based evidence in making educational decisions so that education can give all children, particularly those who struggle with reading, a foundation in literacy to not just finish high school and perform at a proficiency level on the nation's reading report card, but to flourish as imaginative and productive citizens. I speak for myself and I believe for my colleagues when I tell you that we had good intentions and worked very hard, and we even put in place our own standards for avoiding conflicts of interests. However, it is now clear that good intentions and hard work are not enough. To prevent issues like this from occurring in the future, rig-

orous evidence and stricter internal controls must guide these good intentions and hard work.

The welfare of our children and our nation requires that we teach our children to read in an alphabetic writing system; it will not come naturally to them in the absence of good, scientifically based reading instruction. Likewise, the stewardship of the Reading First program must deliver on its promise to ensure that all children will become readers at the end of Grade 3.

TESTIMONY OF CHRISTOPHER J. DOHERTY, FORMER PROGRAM DIRECTOR FOR READING FIRST, U.S. DEPARTMENT OF EDUCATION

Mr. DOHERTY. Chairman Miller, Ranking Member McKeon and members of the committee, than you for the opportunity to address you today about my role in the management and implementation of Reading First.

I worked diligently for nearly 5 years to implement one of the largest educational initiatives ever undertaken by the federal government, and my sole motivation was to help the children of this country learn how to read. Reading First offers millions of our most disadvantaged children the benefit of effective early reading instruction. I took my responsibility toward these children seriously, and all my decisions were based on compliance with the law and maximizing Reading First's impact on children learning how to read.

That these efforts were successful is evidenced by the performance of Reading First schools and in states' satisfaction with the implementation of the program, documented by multiple sources. Due to time constraints, I will not be able to discuss all of these sources here. However, I submitted a number of them with my written testimony.

These facts notwithstanding, a distorted story has been written over the past few months based on the worst possible interpretation of events that occurred during the early days of Reading First. I am pleased to have the opportunity today to offer a different view of the program.

The Reading First section of the No Child Left Behind law placed very clear requirements on the instructional materials that could be used. The statute details in numerous places that all instructional materials must be based on scientifically based reading research. This limitation was not added by the department; it is very prominent in the legislation crafted by this committee and authorized into law.

The requirements of the law recognized that some instructional programs and materials are based on scientifically based reading research and some are not. The suggestion that has been put forth by some recently that it was inappropriate to question grantees about programs that did not appear to comply with the law is stunning. In fact, we were questioned by congressional committees in 2003 and again in 2004 about what the department was doing to ensure that Reading First funding was not going to programs that were not aligned with the research.

We never directed which particular scientifically based instructional materials states or districts must use. The point was to comply with the law and maximize Reading First's impact on children learning to read.

States did not have to identify programs in their applications. They had only to identify the criteria they would use to select programs. Clearly, states got this message. Only three state educational agencies specifically identified the core reading programs that their districts would use in their Reading First applications.

I believe Reading First has worked well because we insisted on faithful implementation of the law. It is making a real difference for states, districts and schools and, most importantly, children throughout the country. Reading First is the only No Child Left Behind program to receive an effective rating from the Office of Management and Budget. Only 17 percent of federal programs reviewed across the government have received this highest rating.

The data from Reading First schools, which have been painfully and surprisingly absent from this debate about the program's administration, speak for themselves. Based on the data available when I left the department and corroborated by new data released by the department yesterday, Reading First schools, which are, by definition, the most disadvantaged and lowest-performing schools in their states and districts, have shown dramatic gains on reading outcome measures across all grades and across all disaggregated subgroups.

To give just one example of increases in state-level data, Arizona announced that academic gains had "skyrocketed," their word, in its Reading First schools, with students in all grades K-3 making dramatic gains that far outpaced comparison schools. Arizona has seen the achievement gap close, the entire purpose of this historic No Child Left Behind Act. Ninety-seven percent of white students, 96 percent of Hispanic students and 95 percent of Native American students in its Reading First schools finished first grade at grade level.

Reports from both the Government Accountability Office and the Center on Education Policy show the high level of satisfaction that states had with the department's implementation of Reading First. States have not been silent in their criticism of many other components of No Child Left Behind. However, they credit Reading First with improvements in student achievement and have consistently spoken highly of the department's management of Reading First.

I am proud of what the program has achieved and of my role in its implementation. I respected the chain of command at the Department of Education, receiving directives which I never had reason to question and keeping superiors informed about this high-profile, billion-dollar-a-year program which was under scrutiny from its inception.

Did I take my responsibility for rigorous implementation of Reading First seriously? I respectfully and proudly tell you that yes, I did, because I wanted to ensure compliance with this law and maximize Reading First's impact on children learning how to read.

I sincerely thank you for your attention.

[The statement of Mr. Doherty follows:]

Prepared Statement of Christopher J. Doherty, Former Program Director for Reading First, U.S. Department of Education

Chairman Miller, Ranking Member McKeown and Members of the Committee: Thank you for the opportunity to address you today about my role in the management and implementation of the Reading First program. I worked tirelessly for

nearly five years to implement one of the largest educational initiatives ever undertaken by the Federal government, and my sole motivation was to help the children of this country learn how to read. Too many of our nation's children are denied the opportunity to achieve to their full potential because they do not become proficient readers. The Reading First program offers millions of our most disadvantaged children the benefit of effective early reading instruction, and the limitless possibilities that come with being a literate citizen.

I took my responsibility toward these children seriously every day, and all decisions were based on compliance with the law and maximizing the program's impact on children learning how to read. That these efforts were successful is evidenced by the performance of Reading First schools and in states' satisfaction with the implementation of the program, documented by multiple sources. These facts notwithstanding, a distorted story has been written over the past few months based on the worst possible interpretation of events that occurred during the early days of the Reading First program. I am pleased to have the opportunity today to offer a different interpretation of those events, the one that I know to be true.

The Reading First section of the No Child Left Behind law broke new ground for Federal education programs. This landmark legislation placed very clear requirements on the instructional materials that could be used in connection with the Reading First program. The statute details in numerous places that all instructional materials must be based on scientifically based reading research. This limitation was not added by the Department; it is very prominent in the legislation crafted by this Committee and authorized into law.

Improving the quality of reading instruction in our nation's most disadvantaged schools is what the law charged us to do. The requirements of the law recognized that some instructional programs and materials are based on scientifically based reading research and some are not. The suggestion that has been put forth by some recently that it was inappropriate to question grantees about programs that did not appear to be based on scientifically based reading research is stunning. In fact, we were questioned by Congressional committees in 2003 and again in 2004 about what the Department was doing to ensure that Reading First funding was not going to programs that were not aligned with the research.

We did monitor implementation, and we did question the use of programs that did not appear to be based on scientifically based research. The point in doing this was never to direct which particular scientifically based instructional materials grantees or subgrantees must use—the point was to comply with the law and maximize the program's impact on children learning to read. The law was clear that programs must align with the research, and the research is clear that programs that are most effective in teaching children, especially disadvantaged children, how to read feature explicit and systematic instruction in five areas of phonemic awareness; phonics; fluency; vocabulary and comprehension. The importance of explicit and systematic instruction must be underscored—many vendors claim their programs are aligned with the research because they include the instructional components I just named. But a program is not aligned with the scientific findings about how children learn how to read if it does not include explicit and systematic instruction.

The Department worked hard to dispel the belief held by some that there was a 'secret' approved list of programs. It is asserted in the Inspector General's report that a practitioner panel during the Secretary's Reading Leadership Academies—one short session within a multi-day event—convinced states that they could only use the handful of programs identified during that panel. The Secretary's Academies were held in the earliest days of the program and were an introduction to scientifically based reading instruction. Although no mention is made of this any of the Inspector General reports, the Academies were followed by Writer's Workshops, attended by all the states, which were specifically about the Reading First application. The point was made repeatedly at the Writers' Workshops that there was no approved list of programs, and that states did not have to identify programs in their applications—they had only to identify the criteria they would use to select programs.

There is clear evidence that states got this message—only three state educational agencies—California, Michigan, and American Samoa—specifically identified the core reading programs that their subgrantees would use in their Reading First applications. It has been repeatedly and falsely asserted that the approval of Michigan's application sent a message to other states that they had to include certain programs in their applications. The fact is Michigan was among the first six states to receive its Reading First grant, and the other five states did not identify programs. It has been similarly asserted that the expert review panel tried to steer states toward certain programs, and would not recommend applications for approval until

this occurred. The fact that only three states identified programs shows this simply did not happen.

I believe much misunderstanding has arisen from confusion about the timing of events. The first Inspector's General report, which purports to be about the application review, includes events that occurred after states had begun to implement their approved plans. As I noted earlier, questioning of programs was done to ensure that grantees were complying with the requirements of the law. But no one was ever told they must use a certain program or programs instead of others.

Much has also been made of the fact that a technical assistance provider appears to have become somewhat persistent in recommending a particular instructional assessment on two occasions. Yes, this occurred, and as the Inspector General's report shows, it was immediately addressed by the program office. Technical assistance providers had hundreds of contacts with states. That two isolated incidents of this kind could be identified among hundred of contacts is evidence of a very good track record of technical assistance, not a pervasive pattern of inappropriate activity.

The same conclusions can be drawn about the Reading First program as a whole: while not perfect in every detail, the program has a very good track record. It has been well implemented and is making a real difference for states, districts, schools, and most importantly, children throughout the country. Reading First is one of only four Department of Education programs to receive an effective rating from the Office of Management and Budget—and the only program that is part of the No Child Left Behind Act to receive this distinguished rating. As you know, OMB's assessment is based on program performance and management, and only 17% of Federal programs reviewed across the government have received an effective rating.

The data from Reading First schools—which have been painfully and surprisingly absent from this debate about the program's administration—speak for themselves. Reading First is a very large program—implemented in nearly six thousand schools—and despite its size there is clear evidence of its positive impact. Based on the data available when I left the Department, Reading First schools have shown dramatic gains on reading outcome measures across all grades and across all disaggregated subgroups. Sixty percent of third grade students in Reading First schools were reading at the proficient level on measures of reading comprehension—up from 28% when the program began, and as you know, Reading First schools are by definition the most disadvantaged and lowest performing schools in their districts and states.

These impressive increases hold for all subgroups across the same time period—third grade economically disadvantaged students have increased from 20% to 58%; third grade English language learners from 13 to 59%; and students with disabilities from 12 to 33%. To give just two of the many examples of increases in State level data—students in Reading First schools doubled the gains of non-Reading First schools in Washington State, despite the fact that the poverty rate in Reading First schools is more than twice the rate in non-Reading First schools. Arizona announced that academic gains had "skyrocketed" in its Reading First schools, with students in all grades K-3 making dramatic gains that far outpaced comparison schools. Arizona has also seen the achievement gap close—the entire purpose of the historic No Child Left Behind Act itself. 97% of white students, 96% of Hispanic students and 95% of Native American students in its Reading First schools finished first grade at grade level. And the Bureau of Indian Affairs—which serves some of the highest needs schools and students in the country—saw the percentage of students at benchmark increase from 28% to 50% in its first two years of Reading First implementation.

There is also clear evidence of the high level of satisfaction states have with how Reading First has been implemented and its impact on students. Reports from both the Government Accountability Office and the Center on Education Policy show not only that the states credit Reading First with improvements in student achievement, but that the states were satisfied with the Department's implementation.

What is perhaps most incongruous about the present controversy is that it has nothing to do with the success or failure of the program for America's children. The complaints against the program were made by a handful of vendors, not by the program's grantees or subgrantees. The Inspector General launched several extensive audits of Reading First based on these vendor complaints, and it became very clear early on that the Inspector General's findings of mismanagement were a foregone conclusion. I was presented with preliminary findings before I had a single interview with the auditors. False findings of this kind are perhaps unsurprising given the climate of mistrust that has afflicted government service in recent decades. As Steve Kelman of Harvard University noted in a recent Washington Post op-ed on the Inspector General Process, there is a consistent focus on the negative, on controls rather than creativity, and on documentation rather than performance. Any

shred of evidence that seems to support the investigator's hypothesis—in this case a small number of regrettably coarse emails—can be elevated to the status of gospel.

Let me conclude by returning to my original theme: Reading First has been an extremely successful program and its achievements for the nation's children did not happen by accident. They are a result of faithful implementation of the law and a desire to maximize the program's impact on children learning to read, both of which required ensuring that only instructional materials based on scientifically based reading research were used. I am proud of what the program has achieved and of my role in its implementation. My career has been devoted to public service—beginning in the foreign service, and then working to improve educational opportunities for disadvantaged children in Baltimore. This included being the first director of the Baraka School in Kenya, the subject of the award-winning documentary "The Boys of Baraka."

When I was asked to serve as director of Reading First, I was honored and humbled by the importance and magnitude of the task. I endeavored always to fulfill my role with integrity. I respected the chain of command at the Department of Education, faithfully executing orders from superiors, which I never had reason to question, and keeping superiors informed about the program. The suggestion that Reading First was mismanaged has deeply hurt me and my family and is completely unfounded.

Did I take my responsibility for rigorous implementation of this program seriously? I respectfully and proudly tell you that, yes, I did, because I wanted to ensure compliance with the law, and maximize the program's impact on children learning how to read. I am pleased to report that the effort has been a success. I can only hope that more children will learn to read as a result of this vitally important program in the years ahead.

Thank you for your attention.

TESTIMONY OF ROLAND GOOD, ASSOCIATE PROFESSOR, UNIVERSITY OF OREGON

Mr. GOOD. Chairman Miller and members of the committee, thank you very much for the opportunity come here and participate in clarifying the record about our involvement in Reading First. I have submitted written testimony, and I would like to summarize and elaborate on that today.

First, I think that Reading First has been a remarkable and incredible bipartisan effort across Democrats and Republicans to make a much needed change in reading outcomes for our children and especially for the children who are most at risk, our poor and children from diverse backgrounds.

I am a professor at the University of Oregon. For about the last 20 years or so, I have been doing research and teaching and presenting on reading with particular emphasis on reading assessment, especially around the areas of early literacy and of a prevention-oriented model to ensure that all of our children are on track.

Very early in the Reading First process, I was invited to participate on the assessment committee of the secretary's Reading Leadership Academies. I was invited by Dr. Kame'enui and had the opportunity to participate on a committee of scientists and of researchers who in our field are without peer with the highest scholarly credentials that we have. I was very honored to be a part of that committee.

As a result of that committee work, we began a process of establishing scientific standards and applying those standards to assessments to be able to put into practice the words about scientifically based reading research in evaluating assessments. In doing that, we followed the highest standards of avoidance of conflict of interest in the academy.

As a professor, we are not unfamiliar with conflict of interest. Whenever we research, whenever we publish, there are always issues of conflict of interest. We address those within the university setting by first being public about what our investment is. Second, we focus on evidence. It is not about judgment, but it is about evidence, what science can we bring to bear. And third, we avoid direct participation in any evaluation of our own work or of our own product, and we have a blind review process of things that we are involved in.

DIBELS was one of the 29 measures that was evaluated by that committee. In every review of DIBELS, I recused myself from any discussion and did not participate directly in any discussion of DIBELS, and I do not know who did. Whoever reviewed it is blind to me. That review encompassed DIBELS and many others.

Subsequent to my involvement on the assessment committee, I also was faculty on the Western Region Reading First Technical Assistance Center for a period of time and participated in presentations at the secretary's Leadership Academy and at subsequent Reading First national conferences.

In that time, I would really championed the use of assessment in a prevention oriented model. I have used DIBELS as examples in those presentations. I have used other assessment measures as examples as well.

Currently, I continue to do research and training around early literacy assessment. I continue to consult with states when I am requested to.

I would really like to see this important innovation continue. I would really like to see the words "scientifically based reading research" turned into practice in a way that can be defended. I think we need to have a panel that is continuing, that is charged with review of programs and review of assessments, a panel and a process where it can be above even the appearance of a conflict of interest and rigorously supervised. All of that is very important to continue this important landmark work that is Reading First.

This has been an opportunity to change in a very meaningful way the lives of our children who are most at risk.

Thank you very much for the opportunity to speak with you today. I would be very pleased to answer any questions you have.

[The statement of Mr. Good follows:]

Prepared Statement of Roland H. Good III, Associate Professor, University of Oregon

Mr. Chairman and distinguished members, it is a pleasure and honor to testify before you. For the past 19 years my colleague Ruth Kaminski, myself, and a team of researchers and graduate students have pursued a program of research expanding the measurement technology that is the foundation for DIBELS 6th Edition. Our work builds on the previous research begun initially by Professor Stan Deno and the team of researchers at the Institutes for Research on Learning Disabilities at the University of Minnesota and carried on today by many researchers in Curriculum-Based Measurement of Reading, or CBM. CBM is a measurement technology for developing brief, one-minute, repeatable, fluency-based measures of reading proficiency. The measurement technology has remarkable reliability and validity supported by over 30 years of research. Today that measurement technology is used in many reading assessments including DIBELS 6th Edition.

Our research team has extended that measurement technology and research base in two primary areas: (a) a downward extension of the measures to the early literacy skills of phonemic awareness and phonics in kindergarten and early first

grade, and (b) the extension of a decision-making model to general education settings with an emphasis on early intervention and problem prevention.

Our research focus on early literacy assessment was motivated by a crisis in our reading instruction and reading outcomes for our children, especially our children from poor and diverse backgrounds. We began with an exhaustive review of the existing research literature at that time and identified core components of early literacy that should form the content of instruction and the target of assessment. Those 5 core components were eventually identified by the National Reading Panel as phonemic awareness, fluency, vocabulary development, and reading comprehension. It is not a coincidence that we targeted very early essentially the same skills identified by the National Reading Panel: We were reading the same research.

Our most important work so far has been the articulation of a prevention-oriented decision model supporting educators to use assessment to inform instruction to change reading outcomes. In the Outcomes Driven model, we recommend that educators use assessment to (a) identify need for support, (b) validate need for support, (c) plan and implement support, (d) evaluate and modify support, and (e) review support. Essentially those decisions require that assessment be used for the purposes of screening, diagnostic assessment, progress monitoring, and evaluation of outcomes.

Those 5 core components and 4 purposes of assessment form the backbone of Reading First assessment requirements. I believe Reading First represents the state of the science about early literacy assessment and instruction. We did not develop early literacy assessment for Reading First, we have spent almost 20 years developing early literacy assessments for the state of the science about reading instruction. We arrived at essentially the same place as Reading First through a convergence of paths.

Some see DIBELS 6th Edition as an extremely valuable measure that has been instrumental in helping schools with very high educational needs make dramatic changes in reading outcomes for their children. However, DIBELS 6th Edition is just a set of simple, easy measures that utilize public, readily available measurement technology. Others can and have developed competing measures using that measurement technology. The principle value of DIBELS 6th Edition is not in the measures themselves, it is in the extensive program of longitudinal research that documents the reliability, validity, and decision utility of the measures. From that research we know what level of early skill places a student at risk of not achieving later reading outcomes. We know what levels of early literacy skills students need to achieve by when in order to make adequate progress toward reading proficiency. Most important, we can evaluate a student's progress toward goals on a direct and frequent basis and know, within weeks, whether our instruction is adequate or must be modified or enhanced on a student-by-student basis.

Throughout our work with DIBELS 6th Edition and prior editions, we have tried to maximize the impact of our work for children. We strive to make this powerful measurement technology readily, easily, inexpensively available for educators. A version of DIBELS 6th Edition is easily available on the internet for free download and unlimited photocopying for educational purposes. We are unconditionally committed to continuing to have DIBELS future editions available for free download and unlimited photocopying as long as there are users who need it. We also have the same materials available in published form from Sopris West, and Wireless Generation offers the same assessment on a handheld Palm device. Ruth Kaminski and I developed a similar set of measures called Voyager Indicators of Progress (VIP) embedded within the Voyager Universal Literacy curriculum. Schools may choose to download for free, or purchase version, or use the handheld Palm. Or schools may choose to use the curriculum embedded version.

Chairman MILLER. Thank you.

Dr. Simmons?

TESTIMONY OF DEBORAH C. SIMMONS, PROFESSOR OF SPECIAL EDUCATION, TEXAS A&M UNIVERSITY

Ms. SIMMONS. Mr. Miller and Mr. McKeon and members of the committee, like Dr. Good, I have submitted written testimony, and I will briefly summarize my involvement in Reading First for you today. Thank you for this opportunity.

I have always told folks I had the most important and best job in the world. I get to teach future teachers. I get to observe in classrooms. I get to help solve school's problems.

And one of the biggest problems that Reading First is addressing is the number of children that we have who are not readers and who are not readers by the end of Grade 3, and we know that if a child is not a reader by the end of first grade, there is a very low probability that they will become a successful reader, and that is where I have spent my life's work.

I spent the first 10 years as a special educator in public schools. The next 10 years, I worked with schools to try to help them fix programs and reading programs. Asking teachers to fix an ineffective program is like asking a pilot to fly and build a plane at the same time. It is just physically impossible. So good programs and scientifically based programs are at the heart of what I do.

Regarding my involvement in Reading First, I was involved in two primary areas. I worked as a member of the assessment committee. As Dr. Good and Dr. Kame'enui have described, this was an important work that helped establish assistance for schools as they tried to implement Reading First. There literally was no resource for schools to go to to help identify assessments to use, and that was the purpose of the assessment committee, was to provide some assistance to schools.

Members of that committee were the most professional experts with whom I have ever worked. They never reviewed assessments with which they were affiliated. I am not an author of an assessment, but I can speak from participating in that committee that the rigor was at the highest level on that committee.

My second area of involvement was in the area of presentations that I did. Two of those were at the Leadership Academy. Those presentations involved components of effective instruction, and at no point in those presentations did I endorse or promote specific programs.

Though my involvement in Reading First was very limited and largely constrained to 2001 and 2002, it was a time of great excitement and great hope, and recently I have had opportunities to be observing in schools that have been involved in Reading First, and I can tell you that I see a big difference in those schools.

I see children who at the beginning of kindergarten knew no letters and no sounds reading sentences and writing words. I see schools that look very differently than they would have without this assistance from Reading First, and it has been a privilege to participate in those activities.

Thank you.

[The statement of Ms. Simmons follows:]

Testimony to the U.S. House of Representatives Committee on Education and Labor

Dr. Deborah Simmons

Mr. Chairman and Members of the Committee:

I am here as an individual who has committed her life's work to teaching children to read. I began as a speech clinician in the public schools in Tennessee and today conduct research in Texas, Connecticut, and Florida. From research we know that if a child is a struggling reader at the end of first grade there is only a 1 in 5 chance of becoming an average reader. To address this problem, my research focuses on building and evaluating effective beginning reading programs for children who need the best instruction possible.

Let me respond to some of the questions you may have about my role in Reading First.

What Was My Role in National Reading First Efforts?

My specific activities in Reading First at the national level involved the following. I provided 3 presentations and one professional development session, all delivered in 2002. In 2005, I presented a workshop for members of the technical assistance centers. These presentations focused beginning reading instruction, professional development, and the Consumer's Guide. I was paid on a daily basis for this work.

In 2001 and 2002, I participated as a member of the Assessment Committee. Based on my recollection, all committee members identified assessment tools on which they were authors and they did not evaluate the adequacy of assessment instruments on which they were authors. I am not an author of any reading assessments. I was compensated at a daily rate for work conducted on this committee.

It has been stated in various reports that I have been Co-Director or staff member of the Western Regional Reading First Technical Assistance Center. This is not correct. I was never a staff member or director of a regional or national Reading First center.

What Was My Role in Product Development?

In 2000, I served as a co-developer of "*A consumer's guide to evaluating core reading programs grades K-3.*" This Consumer's Guide was developed before Reading First. It was provided at no cost to users. As designed, it has included a level of review for existing programs with a research base and untested programs that incorporate scientifically based practices.

The Oregon Department of Education established the Oregon Reading First Center at the University of Oregon in 2003. I served as co-director in 2003. In fall 2003, I resigned my role as co-director and served as a part-time staff member through spring of 2004. During this period I participated in a limited role in the Core and Supplemental/Intervention program review. I reviewed two grade levels of one core program and two supplemental programs. For each program I reviewed, I signed a conflict of interest statement indicating I had no personal or financial relationship with the product.

In spring 2004, the Oregon Reading First Center revised the initial review of Core Reading Programs. Although I was not directly involved in this re-analysis, I was advised of the decision and agreed with the rationale. It has been asserted that this revision benefited a program from which I profited. That is not correct. First, the criteria were applied consistently across all programs. Second, I received no personal benefit from this adjustment as I was not an author of a published core program at the time. The reporter for the Chronicle of Higher Education who

investigated allegations related to this reanalysis wrote to me as his article was being published: *"I hope that I've done justice to the various arguments here. Looking over the article this morning, I wish that I had said more explicitly that it appears that Oregon scholars were acting in good faith when they removed the vocabulary and comprehension elements from their product analyses in 2003. As far as I can see, there is no reason to believe that the Oregon center was trying to cherry-pick a list-making method that would boost Scott Foresman and injure Success for All..."*

Did I Use My Involvement in Oregon Reading First to Influence States' Decisions About Reading Programs to Obtain Financial Benefit?

No I did not. I am an author of an intervention program published by Pearson/Scott Foresman in 2002/2003. This program was reviewed as part of the Oregon curriculum review process. According to the Oregon Reading First website, 66 individuals from across Oregon served on the curriculum review panel that evaluated programs for Oregon. Individuals who reviewed programs signed conflict of interest forms. I did not participate in the review of the intervention program on which I am an author. I was blind to the reviewers, the review process, and the analysis of results. I did not promote this product in workshops I conducted for national Reading First.

I am now an author of a Scott Foresman core reading program that was published in 2006. I began receiving royalties in 2006. This 2006 reading program was not part of the Oregon review conducted in 2003. Except for one workshop conducted in 2005, I stopped my involvement with national Reading First in 2002.

In Summary, based on my recollection and documentation:

- My national Reading First activities included delivering 3 presentations and 2 workshops and serving as a member of the Assessment Committee. None of the presentations I conducted involved recommendations of reading programs. I am not an author of a reading assessment.
- I was never a staff member of a national or regional TA center.
- I co-developed the Consumer's Guides based on a review of beginning reading research. I participated in a limited review of core and supplemental reading programs for Oregon Reading First. I signed conflict of interest statements for each review I participated in. I was not an author of a core reading program during this time. I was an author of an intervention reading program that was included in the Oregon review. I did not review my program. I was blind to the reviewers, the review process, and the analysis of results. I did not promote my product in workshops I conducted for national Reading First.
- I am now an author of a core reading program that was published in 2006. This program was not one of the core reading programs reviewed by Oregon Reading First in 2003. Except for one workshop conducted in 2005, my involvement with national Reading First activities ended in 2002.

Chairman MILLER. Thank you.
Ms. Lewis?

TESTIMONY OF STARR LEWIS, ASSOCIATE COMMISSIONER, KENTUCKY DEPARTMENT OF EDUCATION

Ms. LEWIS. Chairman Miller, Ranking Member McKeon, and honorable members of the committee, thank you for this opportunity to share Kentucky's experience in Reading First.

I serve as the associate commissioner in the Kentucky Department of Education's Office of Teaching and Learning, and in this role, I led our efforts during the Reading First grant-writing phase,

and my office is responsible for the implementation of the Kentucky Reading First plan.

I would like to begin my comments today by saying that Kentucky's involvement in Reading First has been extremely beneficial, allowing us to create a statewide support system for beginning readers, their teachers and administrators.

I am extremely proud of the Kentucky schools involved in this program and of the staff at the Kentucky Department of Education who support their efforts. However, there were some issues that we faced in Kentucky, issues the committee may want to consider as they prepare for reauthorization of Reading First.

Our introduction to Reading First was in February of 2002 when we attended the department's Reading Leadership Academy. Using the knowledge we obtained from the academy and other technical assistance provided, we drafted our proposal and submitted it to the department's expert review panel for approval in May of 2002.

Our commissioner at the time, Gene Wilhoit, reported to our board of education that this proposal was the best thought-out and well-written proposal he had seen. In short, we were confident that we had put together an excellent proposal and that it met all established criteria.

Unfortunately, this proposal was rejected by the department's expert review panel, as were our second and third proposals. It was only after our fourth submission that our proposal was approved.

We had asked for but had not received the expert review panel's actual comments. I must add that I did receive them yesterday from staff. But the summary sent to us by the Reading First director, Chris Doherty, repeatedly pointed to concerns about one of our proposed assessments.

Our first two proposals did not include DIBELS. We were hoping to build on our existing experience with another assessment called Developmental Reading Assessment, or DRA. We really felt that we had strong experience and evidence of success from schools and districts using this assessment.

After the expert review panel rejected our first two proposals, we contacted Mr. Doherty who referred us to RMC Research Corporation to obtain technical assistance. During our conversation with the RMC technical assistance team, we were given advice about a number of issues related to our proposal, but we were repeatedly advised to replace DRA with DIBELS.

I mentioned on a conference call with the RMC team that endorsing DIBELS appeared to be a conflict of interest, given the involvement of a number of individuals connected to DIBELS who also served on the Reading First Academy assessment committee. The RMC team acknowledged the connections, but continued to say that our proposal would likely be viewed more favorably if we included DIBELS. After this call, we learned that one of the members of the technical assistance team, Joe Dimino, was a DIBELS trainer.

Commissioner Wilhoit sent a letter to then-Secretary of Education Rod Paige appealing that decision to deny Kentucky's funding based on inconsistencies in expert review panel decisions across states and on our concerns related to potential conflicts of interest. We received a response from Eugene Hickock, the former deputy

secretary of education, assuring us that there were no discrepancies between state reviews and no conflicts of interest.

After receiving the response from Mr. Hickok, we reorganized our proposal to more clearly and explicitly address the concerns of our panel and resubmitted in December 2002. In this second proposal, we addressed every concern identified in the summary provided by Mr. Doherty and even added DIBELS, but we did not drop DRA. On January the 8th, 2003, we received notification that our expert panel had again rejected our proposal.

In March of 2003, we had a conference call with Mr. Doherty. We pointed out that we had been reviewing other state approved plans and that at least one included DRA. He assured us that the state in question had agreed to remove the assessment even after approval. While Chris never actually said the words, "Kentucky will never be funded as long as it includes DRA," we all left the discussion understanding that to be the case.

We removed DRA, kept DIBELS, resubmitted our proposal in March of 2003. We were approved for funding in the next month.

During the proposal phase, Kentucky did not experience pressure concerning core programs or intervention programs. As we described in our proposal, Kentucky has legislation that gives all curriculum decision-making authority to school councils and explicitly prohibits the Kentucky Department of Education from mandating curriculum materials.

However, after we started implementing Reading First and after our first federal monitoring visit, the monitoring team's report raised concerns about Reading Recovery and Rigby as not being sufficiently grounded in scientifically based reading research. In the letter from Mr. Doherty accompanying the report, he did not name the programs specifically, but raised concerns.

Again, we had a conference call with him during which he suggested that our funding might be in question if we continued to allow schools to purchase these two programs. We asked Chris to put in writing that we could not use Reading First funds for Reading Recovery or Rigby, he refused, but he did invite us to write a defense of the two programs. We did so and have never received a response from the department.

Since the recent reports and the departure of Mr. Doherty from the department, we have received e-mails, letters and calls from new Reading First staff, but we have referred them to the letter we sent to Secretary Paige, and we have requested the names of our expert panel members and copies of their responses. We got the responses yesterday but not the names, and we had not received the information before then.

I want to repeat that Reading First has been a success in Kentucky. I am here today to give feedback to the committee on the problems we faced so that Reading First can go forward stronger and continue to make a difference in classrooms across Kentucky.

Thank you.

[The statement of Ms. Lewis follows:]

Prepared Statement of Starr Lewis, Associate Commissioner, Kentucky Department of Education

Chairman Miller, ranking member McKeon, and honorable members of the Committee, thank you for this opportunity to share Kentucky's experience in Reading

First. My name is Starr Lewis and I serve as the Associate Commissioner in the Kentucky Department of Education's Office of Teaching and Learning. In this role, I led our efforts during the Reading First grant-writing phase, and my office was and is responsible for the implementation of the Kentucky Reading First plan.

I would like to begin my comments today by saying that Kentucky's involvement in Reading First has been extremely beneficial to our state. It has allowed us to create a statewide support system for beginning readers, their teachers and administrators. Reading First has shifted our focus onto struggling readers and provided Kentucky with the resources to give teachers the skills and tools needed to help these students. I am extremely proud of the Kentucky schools involved in this program and of the staff at the Kentucky Department of Education who support their efforts. However, there are some issues we faced in Kentucky, which the Committee may want to consider as they prepare for reauthorization of Reading First.

Our introduction to Reading First was in February of 2002 when we attended the Department's Reading Leadership Academy. The purpose of the Academy was to help states gear up for the implementation of Reading First. Using the knowledge we obtained from the Reading Leadership Academy and other technical assistance provided, we drafted our proposal and submitted it to the Department's expert review panel for approval in May of 2002. Our Commissioner at the time, Gene Wilhoit, reported to our Board of Education that this proposal was the best thought-out and well-written proposal he had seen. In short, we were confident that we had put together an excellent proposal and that it met the established criteria. We were excited about helping young readers and expected to implement Reading First starting in the fall of 2002. Unfortunately, this proposal was rejected by the Department's expert review panel, as were our second and third proposals. It was only after our fourth submission that our proposal was approved.

While we have asked for but have not received the expert review panel's actual comments, the Department's summary sent to us by the Reading First Director, Chris Doherty, repeatedly pointed to concerns about one of our proposed assessment tools. Our first two proposals did not include the Dynamic Indicators of Basic Literacy Skills assessment tool, which is now commonly referred to as DIBELS and which was developed at the University of Oregon. Instead, we were hoping to build on our existing experience with another reading assessment tool, Diagnostic Reading Assessment (DRA). We felt that we had strong experience and evidence of success from schools and districts using DRA. After the expert review panel rejected our first two proposals, we contacted Mr. Doherty who referred us to RMC Research Corporation, a Department contractor, to obtain technical assistance. During our conversations with the RMC technical assistance team, we were given advice about a number of issues related to our proposal and we were repeatedly advised to replace our current assessment tool with DIBELS. I mentioned on a conference call with the RMC technical assistance team that endorsing DIBELS appeared to be a conflict-of-interest given the involvement of a number of individuals with connections to DIBELS and who also played roles in the implementation of Reading First in that they served on the Reading First Academy Assessment Committee. The RMC technical assistance team acknowledged the connections, but continued to say that our proposal would likely be viewed more favorably if we included DIBELS. After the call we learned that one of the members of the technical assistance team, Joe Dimino, was a DIBELS trainer.

Commissioner Wilhoit, sent a letter to then Secretary of Education, Rod Paige, appealing the decision to deny Kentucky's funding based on inconsistencies in expert review panel decisions across states and on our concerns related to potential conflicts-of-interest. We received a response from Eugene Hickock, the former Deputy Secretary of Education, assuring us that there were no discrepancies between state reviews and no conflicts-of-interest.

After receiving the response from Mr. Hickok, we worked with two members of the RMC staff. After we had reorganized our proposal to more clearly and explicitly address the concerns of our panel, we resubmitted our proposal in December 2002. In this second proposal, we addressed every concern identified in the summary provided by Mr. Doherty and even included DIBELS, but we did not drop our current assessment tool.

On January 8, 2003, we received notification that our expert panel had again rejected our proposal.

In March of 2003, we had a conference call with Mr. Doherty. We pointed out to Mr. Doherty that we had been reviewing other states' approved plans and that at least one included the assessment tool we wanted to use. Mr. Doherty assured us that the state in question had agreed to remove the assessment tool even after approval. While Chris never actually said the words, "Kentucky will never be funded as long as it includes DRA," we all left the discussion understanding this to be the

case. We removed the proposed assessment tool, included DIBELS and resubmitted our proposal in March of 2003. We were approved for funding in the next month.

During the proposal phase, Kentucky did not experience any pressure concerning core reading programs or intervention programs. As we described in our proposal, Kentucky has legislation that gives all curriculum decision-making authority to school councils and explicitly prohibits the Kentucky Department of Education from mandating curriculum materials. However, after we started implementing Reading First and after our first federal monitoring visit, the monitoring team's report raised concerns about Reading Recovery and Rigby as not being sufficiently grounded in scientific based reading research. In the letter from Mr. Doherty accompanying our monitoring report, he did not name the programs specifically but raised concerns. Again, we had a conference call with Mr. Doherty, during which he suggested that our funding might be in question if we continued to allow schools to purchase these two programs with Reading First funds.

We asked Chris to put in writing that we could not use Reading First funds for Reading Recovery or Rigby. Chris refused, but he did invite us to send him a defense of the two programs. We did so, but we never received a response from the Department.

Since the release of the recent OIG reports and the departure of Mr. Doherty from the Department, we have received emails, letters, and calls from new Reading First staff at the Department inviting us to share any concerns. We have referred Department staff to the letter we sent to Secretary Paige outlining our concerns. Also, we have requested the names of our expert panel members and copies of their responses, but we have not yet received that information.

In closing, I want to repeat that Reading First has been a success in Kentucky. I am here today to give feedback to the Committee on problems we faced in Kentucky so that these issues can be addressed. Addressing these problems now will help ensure that Reading First will be stronger going forward and that it will continue to make a difference in classrooms across America.

Additional written testimony:

Preparing for this hearing gave me the opportunity to review the responses of our expert panel sent to use from Chris Doherty and Sandi Jacobs. In general I found the responses to be vague and not helpful, and they led to very few substantive changes in our proposal. The repeated rejections did lead to substantial delay in implementing our programs. We were a full year behind in getting reading programs implemented in our schools.

The most substantial change we made in our plan related to the removal of our original proposed assessment and the addition of DIBELS. The developers of DIBELS point out that the test is available for free on the web. While this is the case, teachers have to print out the assessment in paper version. This requires teachers to manipulate a variety of tools at one time while at the same time listening to a child's reading performance. In order to have DIBELS available in a form that promotes ease of use and fast turnaround of results, teachers need a handheld device with DIBELS software. In order to have this version of the tests, we contract with Wireless Generation. Following is a list of our contracts with Wireless Generation, totals that do not include the cost of the handheld devices:

2004–2005—$244,700

2005–2006—$255,000

2006–2007—$225,000

I have been asked several times if we would switch to our original assessment if given the opportunity. My answer is that we are now a DIBELS state, and I would not want us to make a decision that would cause that much change for teachers implementing this program.

I mentioned in my oral testimony that Kentucky's Reading First schools have made gains in student achievement. Our Reading First schools made a 15% gain on Group Reading Assessment for Diagnosis and Evaluation (an additional assessment used in Reading First schools) in the number of students scoring at the Kentucky benchmark from the end of the 1st year of implementation to the end of the 2nd year. They are also on pace to make another 10.5% gain this year from last year. Schools have a higher percentage of students at the benchmark at every grade level K-3.

Reading First schools made a 19% gain on DIBELS in the number of students scoring at benchmark from the end of the 1st year of implementation to the end of the 2nd year.

Reading First schools made better gains than the state average on our state assessment.

Chairman MILLER. Thank you very much.

And thank you to all the panelists for your testimony and again for your participation.

Mr. Higgins, as I understand it, we are currently funding Reading First at a little over $1 billion—is that correct?—and it has fluctuated somewhere between $900,000 and $1 billion over the last 5 years.

Mr. HIGGINS. Yes.

Chairman MILLER. This is a very significant program within No Child Left Behind.

Mr. HIGGINS. Definitely.

Chairman MILLER. Mr. Higgins, looking at your final report, in your Finding 1A, you say the department did not select an expert review panel in compliance with the requirements of NCLB.

You go on to point out that the law specifically described the panel selection process and states that the secretary, in consultation with the National Institute of Literacy, the National Academy of Sciences, the National Institute of Child Health and Human Development—that people will be selected from those panels, three people from each of those organizations—is that correct?—and then the secretary will have selections. Is that correct?

Mr. HIGGINS. Yes.

Chairman MILLER. You go on to also point out that none of the subpanels that were finally put together possessed adequate representation from each of the organizations identified in the law under No Child Left Behind. Is that correct?

Mr. HIGGINS. Yes.

Chairman MILLER. You state—and if I could have Slide A—that "the department created a total of 16 subpanels to review the state applications. A majority of the panels were nominated by the department in 15 of the 16 panels, and seven of the 16 subpanels consisted entirely of department-selected panelists." Is that correct?

Mr. HIGGINS. Yes.

Chairman MILLER. So these panels, these 16 panels, in your opinion, in your report, in matching them with the law, are out of compliance?

Mr. HIGGINS. Correct.

Chairman MILLER. So then prior to forming these subpanels, you tell us that a department official expressed concern that the use of the subpanels would not be in compliance with the law.

Mr. HIGGINS. Correct.

Chairman MILLER. And then the Office of the General Counsel and high-level department officials, including the assistant secretary, approved a plan for the department to create a 12-member advisory oversight panel.

Mr. HIGGINS. Correct.

Chairman MILLER. And, again, they were supposed to select three individuals, almost in accordance with the law, from NIFL, from NAS and from National Institute of Child Health and Development. Is that correct?

Mr. HIGGINS. Yes.

Chairman MILLER. And I guess this is to try to come into compliance with the law.

Mr. HIGGINS. Correct.

Chairman MILLER. But it is not in compliance with the law.

Mr. HIGGINS. No, it is not in compliance with the law totally, but I think they thought that this would bring them closer to being in compliance because the number of subpanels that there were they could not do with the 12 people.

Chairman MILLER. So the 16 subpanels on Slide A, in fact, continue to be out of compliance with the law, and they are used for the reviews that Ms. Lewis talked about. Is that correct?

Mr. HIGGINS. Right, but they thought that the advisory panel that they put that was supposed to have reviewed the results of the subpanels would satisfy the law.

Chairman MILLER. Okay. So you go on to say that the advisory and oversight duties would include examining the progress of the subpanels, reviewing the recommendations of the subpanels, making final findings and recommendations for the secretary, thus ensuring a common high level of quality and consistency across the subpanels. That was the intent.

Mr. HIGGINS. That was the intent.

Chairman MILLER. And you say, "Although the assistant secretary of OESE and the Office of General Counsel officials agreed, the advisory and oversight panels were never created."

Mr. HIGGINS. Correct.

Chairman MILLER. So the panel that was supposed to cure the original violations of the law was never, in fact, empanelled.

Mr. HIGGINS. Right.

Chairman MILLER. So, Mr. Higgins, why all this interest in the makeup of these panels and we essentially only end up with your department nominees?

I am sorry. Mr. Doherty? Mr. Doherty?

Mr. DOHERTY. I beg your pardon, sir. I heard Mr. Higgins' name.

Chairman MILLER. Did you hear the question?

Mr. DOHERTY. Could you please repeat it?

Chairman MILLER. Well, the question is, why do we have these panels, contrary to the law, essentially ending up with only department nominees as membership? And, as is pointed out by the inspector general, we have 15 of the 16 panels with a majority of members nominated by the department and we have a number of panels with all members nominated by the department.

Mr. DOHERTY. The expert review panel process was very complicated and very challenging.

We wanted to ensure that we had sufficient reviewers available in the event that all states came in with their applications at the same time. The funds were to become available as early as July 1, 2002. The application was released in April, and we prepared the panel so that if all states or many states came in at the same time, we could process that.

We modeled our review panel process on the Reading Excellence Act, which is the closest precursor program that exists to Reading First. We thought then and we think now that our efforts did meet the law. We had subpanels that satisfied the requirements of the

statute, and we worked this process out with the Office of General Counsel.

An advisory and oversight panel was suggested to us to ensure even clearer accordance with the law. We, in fact, sent out messages to a 12-member advisory and oversight panel, but, in fact, we never convened that panel because we viewed it as being necessary in the event that the subpanels did not come to consensus.

So we certainly did not have the sense in 2002, 2003, 2004 and 2005 that we were not in accordance with the law. We really did not.

Chairman MILLER. Mr. Doherty, with all due respect, from day one, you were out of compliance with the law by the makeup of the panels. You made a decision not to include nominees from the other three organizations.

Mr. DOHERTY. Sir, I disagree. We really had a logistics issue, and we had nominees——

Chairman MILLER. Mr. Doherty, we are talking about ethics. So your logistics overrode the law.

Mr. DOHERTY. I respectfully disagree, sir.

Chairman MILLER. Well, we asked you why this interest, and noncompliance with the law is found by the inspector general, and your answer is logistics.

Mr. DOHERTY. No, I was trying to give some context as to how we put these panels together. First, we used the structure——

Chairman MILLER. The panels were out of compliance. Do you agree to that?

Mr. DOHERTY. I am not sure. I——

Chairman MILLER. Have you read the inspector general's report? Have you read the law?

Mr. DOHERTY. Yes.

Chairman MILLER. What is your answer again?

Mr. DOHERTY. My answer is that we thought the panel configuration——

Chairman MILLER. No, no. The question is: Were you in compliance with the law?

Mr. DOHERTY. I believe that we were.

Chairman MILLER. You believe that you were. Continue.

Mr. DOHERTY. As I say, we modeled our process after the Reading Excellence Act. They had the same requirements to have panels that satisfied various requirements. In our case, a panel needed to have a psychometrician, someone familiar with reliability and validity data. We needed to have an expert in professional development. We needed to have someone with classroom experience, and we had subpanels that reviewed these things.

Chairman MILLER. So, Mr. Doherty, out of a nation of 300 million people, you could not find the people for these panels. I mean, this is like when the FDA said they could only find people who were on retainers from conflicted interest, and then when the law changed, they found out they could find people who were not conflicted.

Mr. DOHERTY. We got——

Chairman MILLER. Out of the entire education community and all the researchers and all the people getting grants, from all of the

universities and people with all of the history, it is only these people sitting at the table that can comply?

Mr. DOHERTY. The size of the original panel was over 70 people.

Chairman MILLER. Yes.

Mr. DOHERTY. We received nominations from the agencies you mentioned, and yet we did have more nominees from the Department of Education for the reasons that we simply did not have enough nominations from the other agencies to meet the demand if all of the——

Chairman MILLER. So you just went ahead and violated the law.

Mr. DOHERTY. We did not think we violated the law. We worked very closely with the Office of General Counsel in order to satisfy the law.

Chairman MILLER. We will come back to that in a moment.

Perhaps the IG has a better answer in his report when, on page 17, he states, "The Reading First director"—that would be you—"took direct action to ensure that a particular approach to reading instruction was represented on the expert review panel. Direct Instruction is a model for teaching that requires the use of Reading Mastery, a program published by SRA/McGraw-Hill, to teach reading. The Reading First director formerly served as the executive director of the Baltimore Curriculum Project which implemented Direct Instruction in Baltimore City Schools since 1996.

"The Reading First director personally nominated three individuals who had significant professional connections to Direct Instruction to serve on the expert review panel. The Reading First director selected these selected these three individuals to serve on a total of seven of the 16 subpanels, and one of these individuals to serve as panel chair on five subpanels. These three individuals were collectively involved in reviewing a total of 23 state applications."

And then, a subsequent response from the Reading First director suggested his intention is to ensure a "Direct Instruction presence on the expert review panel: 'Funny that the Baltimore City Schools calls me to inform me that there are some pro-Direct Instruction folks on my panel! Too rich!' he says. The panelist then asked, 'Does he know who you are? Past and present?' The Reading First director"—that being you, Mr. Doherty—"replied, 'That is the funniest part. Yes! You know the line from Casablanca, I am shocked, I am shocked that there is gambling going on in this establishment? Well, I am shocked that there are DI people on this panel.'

"Shortly before the exchange, the department employee reported to the Reading First director that the department had received a question from a member of the media about the panel composition. The response by the Reading First director suggests that he may indeed have stacked the expert review panel. The employee stated, 'The question is: Are we going to stack the panel so that programs like Reading Recovery do not get a fair shake?' The Reading First director"—that would be you, Mr. Doherty—"responded, 'Stack the panel? I have never heard of such a thing.'"

That sounds like a better answer that complies with the facts, the laws as found by the inspector general.

Mr. DOHERTY. May I respond?

Chairman MILLER. You certainly can.

Mr. DOHERTY. The suggestion that we did not screen for conflicts of interest in the expert review panel is not correct. It is pointed out in the IG's report that the Reading First Program was not required to screen for conflicts of interest, and yet we chose to screen for conflicts of interest anyway using the strictest methods at the time which applied to discretionary grant programs, not formula grants like Reading First.

So, although we were not required to screen, as pointed out by the inspector general himself, we chose to, and we worked hand in glove with the Office of General Counsel to come up with a screening process. We screened in accordance with the strictest standard, and we reviewed every application when it came in.

The standard that we used, the one that is on the books, is direct financial involvement with a particular program. We actively screened for that, and when every application came in, circa 200 or more pages, we read through those applications to make sure that no panel member who had a link with that program would review that application.

Chairman MILLER. I thank you.

Mr. DOHERTY. Were there people on the panels who were familiar with Direct Instruction? Yes, there were because the law requires subject matter expertise, and that is going to manifest in professionals having knowledge of and some links with programs, but not direct financial involvement, sir.

Chairman MILLER. If I might respond, we understand there obviously would be people who would be linked to these various theories and programs, but the inspector general tells us, "A few days before the department publicly announced the panelists it had chosen to serve, one of the department's nominated panelists contacted the Reading First director and shared his strong bias against Reading Recovery"—strong bias against Reading Recovery—"and the strategy for responding to any state that planned to include Reading Recovery in its application. The Reading First director," Mr. Doherty, "responded, 'I really like the way you are viewing and approaching this, not just because it matches my own approach—I swear!'

"This individual later served as the panel chair of the subpanel that reviewed Wisconsin's state application, and in response to the state's plans to use Reading Recovery, he included an 11-page negative review of Reading Recovery in his official comments on the application.

"Around the same time, Reid Lyon"—I think he is the president's guru on reading—"former chief of childhood development and behavior at NICHD, advised the Reading First director and the assistant secretary of OESE and the senior advisor to the secretary that one of the panelists had been actively working to undermine the National Reading Panel's report on Reading First initiatives.

"Lyon further stated, 'Chances are that other reviewers can trump up a bias on her part.' In a written response to all the people involved, the senior advisor said, 'We cannot uninvite her. We will just make that sure she is on a panel with one of our barracuda types.'"

Do you still think your panels are in compliance with the law? Do you still think this was about evenly distributing people who

might support or believe in Direct Instruction or any other kind and that is all you were doing, is evenly distributing people?

Mr. DOHERTY. Yes, sir, I do. I note for the record that when the 54 state applications came in, only three applications even chose to write the names of core reading programs. So the panels, which were screened appropriately, did not even know the——

Chairman MILLER. That is interesting. They did not know the makeup of the panels.

Mr. DOHERTY. I beg your pardon?

Chairman MILLER. They did not know how the panels were created, and the question of whether they mentioned it or not is not at issue here.

The question is: At the outset of this program, for the panels that are supposed to screen the time and the effort of people like Ms. Lewis in the state of Kentucky, they thought that they were walking into a law that required evenly distributed interests and knowledge and expertise and experience on the part of all of the panelists. That is not what they were talking into.

As Ms. Lewis's testimony points out, it is not all a matter of the written record, and we will visit that in my next round of questioning.

Mr. McKeon?

Mr. MCKEON. Thank you, Mr. Chairman.

Mr. Higgins, in your testimony, you outlined the ways in which the department failed to follow the statute in creating the peer review panel and subpanels. You also show that the department might have sought to ensure that certain types of products had advocates on those subpanels, while other types of products did not.

If Congress took steps to grant the department explicit authority to form subpanels but required those subpanels to include representatives from each of the four entities currently included in the statute and prohibited the subpanels from being comprised of a majority of members from only one of those entities, do you think that would help protect the integrity of the peer review process?

Mr. HIGGINS. Yes, I do think that would help, but you might also want to expand the group to more than four of the organizations that are out there that are experts in the field. That would be my only comment.

Mr. MCKEON. Thank you.

You also talk about how the peer review panelists' comments were not made available to the states.

If Congress took steps to require the department's guidance for the peer review process to provide for publicly available documentation to support the recommendations of the peer review panels, do you think that would help create a more transparent process?

Mr. HIGGINS. Definitely.

Mr. MCKEON. One of the other suggestions that came out of your reports was to provide opportunities to states to talk directly with the peer review panel so the states could get a clearer understanding of what revisions were needed in their applications. Among other things, this would prevent department officials from mischaracterizing or misinterpreting the comments of the panels and thereby providing inaccurate information back to the states.

If Congress required the department to provide states the opportunity for direct interaction with the panels, do you think that would create a stronger peer review process?

Mr. HIGGINS. Yes, I do.

Mr. MCKEON. You discussed the weakness in the department's efforts to screen for potential biases among the peer review panelists. It is accurate, correct that the statute currently does not require the department to screen panelists for potential conflicts of interest?

Mr. HIGGINS. Yes.

Mr. MCKEON. If Congress amended the statute to require such a review that included a review of panelists' financial interests in reading products and other professional connections to products or methodologies and included a requirement that the conflict of interest review be designed to prevent bias or the appearance of it, would that strengthen the peer review process and provide it more credibility?

Mr. HIGGINS. Yes, it would.

Mr. MCKEON. Clearly, we want to strengthen the peer review process to ensure that these appearances of bias are avoided in the future, and our bill, what I introduced yesterday, does that.

But I do want to be clear on one point: In its response to your report, the department responded that there were six panelists who had connections to particular teaching programs. Is that number accurate?

Mr. HIGGINS. Yes.

Mr. MCKEON. And that is six out of how many?

While they are looking at it, let me——

Mr. HIGGINS. Approximately 70.

Mr. MCKEON. Six out of 70?

Mr. HIGGINS. Yes.

Mr. MCKEON. The department further claimed that the inclusion of these six did not result in any, "problematic behavior or that any of these panelists review the state application that included such a program."

Did you find any evidence to support or refute this claim by the department?

Mr. HIGGINS. No, we did not.

Mr. MCKEON. Mr. Doherty, would you care to respond to that?

Mr. DOHERTY. Yes. Thank you.

From the beginning days of the program, we took conflicts of interest very seriously, as evidenced by the fact that we choose to do a rigorous screening for conflicts of interest, even though we did not need to.

As I mentioned, the expert review panel members in only three out of 54 cases even had an opportunity to see actual program names in the application, and above and beyond that, we screened incoming applications to make sure that no one was presented with an application that had reference to a program that they were involved with. The standard that we used was the existing standard at the department, which was direct financial interest.

As Mr. Higgins' last answer, that is also my belief, that no members of the panel who even had a professional link with a certain program, which was itself not the standard of the day, was in a po-

sition to grant funds to that program. I do not believe there were any real conflicts of interest, although I regret any perception of conflicts of interest that may have occurred.

Mr. MCKEON. Thank you.

Mr. Higgins, your reports highlight a number of weaknesses with the conflict of interest screening process within the contracts between the department and RMC Research Corporation and subcontracts entered into by RMC to provide technical assistance.

If Congress included a screening process for these situations that required a review of the potential financial interests in and other connections to particular products for each individual consultant hired under one of these contracts and required the screening process to be designed to prevent bias or the appearance of it, would that strengthen the technical assistance process?

Mr. HIGGINS. Yes, it would.

Could I also correct a statement that I made before?

Mr. MCKEON. Yes.

Mr. HIGGINS. It was not 70. It was 25.

Mr. MCKEON. Six out of 25?

Mr. HIGGINS. Yes.

Mr. MCKEON. Thank you.

Mr. HIGGINS. That we reviewed.

Mr. MCKEON. Thank you.

Mr. DOHERTY. May I make an important clarification to agree with Mr. Higgins?

My understanding is that as part of their review, the inspector general reviewed 25 as a sample of the larger group of about 70. So the six that were found to have this link, which we do not perceive as a conflict of interest, was out of the 25. That is not to say there were only 25 expert panel members.

Thanks for letting me clarify that.

Mr. MCKEON. Thank you.

Beyond what Congress can do to address your specific findings, Mr. Higgins, I do want to get into other aspects of your reports.

We often hear complaints from grant applicants who think the department—and other agencies, for that matter—include requirements that are not perfectly defined in the statute. I guess that is because we do not always pass perfect bills here in Congress.

In your September 2006 report, you state that the department included language in the application that was not based on the statutory language, and as a result, states were forced to meet standards that were not required by the statute.

As I read your report, these nonstatutory-based requirements include having, "coherent instructional design that includes explicit instructional strategies, coordinated instructional sequences, ample practice opportunities and aligned student materials, protected dedicated block of time and small group instruction as appropriate to meet student needs with placement and movement base on ongoing assessment."

These all sound reasonable to me, although I am not an expert on reading instruction. Since you make a point of this in your report, my question is: Is it your view that in order to ask states to meet these types of conditions, Congress must specifically put such conditions in the statute in order for the application to be valid?"

Mr. HIGGINS. What we were talking about——

Mr. MCKEON. Mic. Mic.

Mr. HIGGINS. I need the microphone.

What we were talking about was that there were specific requirements added to the statute for the panels to be reviewing. The requirement of requiring a 90-minute dedicated block of reading time and the requirement to require small groups of instruction, we believe, was designed to lock in Direct Instruction. We also believe that conversely that to eliminate requiring early intervention and reading——

Mr. MCKEON. So you are not suggesting that we do put that language in the statute?

Mr. HIGGINS. No. I am not. No.

Mr. MCKEON. Mr. Doherty, would you care to respond to that?

Mr. DOHERTY. Yes, thank you.

From the time that No Child Left Behind was signed into law, January 8, 2002, a great many people at the Department of Education worked very hard and very quickly to turn that excellent statute—and specifically, in my case, the portion that applies to Reading First—into an application package that states could respond to, fill out, be reviewed against, and then be given their funds for their program.

Although I had never taken part in this exercise before, I quickly learned that there are a number of judgment calls when a team of people takes a guiding statute and turns it into a much larger and much more comprehensive application package to give to our states.

We worked in concert with the Hill on that process. We went back and forth in rigorous discussions with both sides of the aisle on what the application package would entail, and we thought we faithfully and in a good manner translated—that is probably not the right word—but we took the guiding statute and made an application package out of it.

As far as the coherent instructional strategy of protected dedicated block of time and small group instruction, we thought—and think—that those components emanate directly from the guiding research, and in no way was that designed to lock in Direct Instruction. If I am not mistaken, Direct Instruction today represents a very small percentage of Reading First schools.

I do stress we did our best effort to determine an excellent statute into an excellent application and in no way made those decisions to lock in Direct Instruction.

Mr. MCKEON. Thank you.

Sticking with this issue, Mr. Higgins, I assume the department's lawyers reviewed the application, made sure that it conformed to the law. Is that accurate, and if so, do you know why the department's lawyers signed off on the application?

Mr. HIGGINS. I do not know that the general counsel did review it, to be honest with you.

Mr. MCKEON. Mr. Doherty?

Mr. DOHERTY. Yes. The Office of General Counsel, on a complex a new program like this was involved in a very collaborative and supportive way from day one and ongoing. So we fully believe that

the Office of General Counsel, along with many other offices, approved this application.

Mr. MCKEON. Mr. Doherty, I want to spend some time talking about this influencing curriculum issue. I assume that you are familiar with Section 9527 of the SEA and Section 103 of the Department of Education Organization Act, both of which prohibit the federal government from dictating local school curriculum. How does the department define "curriculum"?

Mr. DOHERTY. Actually, I cannot give a formal answer as to how the department officially defines "curriculum."

Mr. MCKEON. Maybe you could respond on that for the record, if you could follow up later with that.

Mr. DOHERTY. Okay. I certainly will.

Mr. MCKEON. Thank you.

What policies does the department have in place to ensure this prohibition is not violated?

Mr. DOHERTY. I cannot speak authoritatively for the department as a whole. I can say that as regards Reading First, we from the first days felt what you might call a structural tension between the very explicit requirement in Reading First that all instructional materials must be based on scientifically based research and our statutory duty to undertake that obligation, that there is, I think, an undeniable underlying tension between that very clear bright line law and the sections of law that you mentioned earlier, sir.

Mr. MCKEON. Mr. Higgins, maybe I will ask you that same question. What policies does the department have in place to ensure that prohibition is not violated?

Mr. HIGGINS. Actually, we had asked the general counsel if there was a definition of "curriculum," and they told us that there was not. So I do not think there are a lot of safeguards.

Mr. MCKEON. No definition, so there is no reason——

Mr. HIGGINS. Exactly.

Mr. MCKEON. So maybe that needs to be addressed.

How did the department's Office of General Counsel communicate with department staff regarding these prohibitions and the policies related to them, Mr. Doherty?

Mr. DOHERTY. I do not recall any particular conclusion that the Office of General Counsel gave us as far as marching orders other than to say we worked closely with the Office of General Counsel, always aware that a new and different law, like Reading First, which specifically required us to ensure that all programs and materials were based on scientifically based research, was something that the department needed to do by law, and we never were told on any occasion that we were violating either of those other sections of law that you cited.

Mr. MCKEON. How many states included a specific list of reading programs in their applications for funding?

Mr. DOHERTY. To the best of my recollection, three of the 54 state educational agencies mentioned core reading programs by name in their applications to the expert review panel. The others, sir, described the criteria with which they would go forth and pick programs with their districts, and they were approved based on those criteria.

Mr. MCKEON. Of those three, how many were sent back for revisions or were denied because of the programs included on their list?

Mr. DOHERTY. Of the three states that cited programs? Sir, is that your question?

Mr. MCKEON. Yes.

Mr. DOHERTY. I do not recall how many times those three state educational agencies had their programs reviewed, but I do mention that there are 25 criteria which an application needs to satisfy, and although we are focusing on programs here, there are a great many other requirements as part of Reading First. So it is quite possible that those states in question might have had a round or two or three of review, and it may or may not have had anything to do with the programs that they cited in one part of their application.

Mr. MCKEON. Thank you.

Is my time expired, Mr. Chairman?

Chairman MILLER. Do you want to finish what you are asking.

Mr. MCKEON. Well, I might have to submit some of these for the record because there are more than I am sure I have time for.

Chairman MILLER. I thank the gentleman.

I am going to go ahead and start my second round of 15 minutes.

I want to advise the members of the committee I will probably only take 5 minutes because we do have a vote on. It is my understanding that we have nine. We have nine votes.

Some of you will have children and grandchildren before we get back here. [Laughter.]

I am going to start and take 5 minutes, and then we will recess for the votes. Then we will come back, I will finish, and then Mr. McKeon gets his time.

I hate to be a stickler for the law, Mr. Doherty, but this law, as the inspector general says a number of times, is pretty explicit with respect to some guidelines for Reading First, and it was written by the proponents of Reading First.

If I could look at Slide B in the guidance—and we will come back to what the guidance was—you decide that the guidance is fundamental, that is where you will put the law, and you state in this e-mail that "It has been suggested to me that the guidance may be the most problematic place to put some of your suggestions for increased boldness. Why? The guidance is the official place where the state people with the closest meaning to the law will go to see where Ed have overstepped the law and let them say in remarks to groups or face to face in meetings about what the review panel will or will not accept. The opportunities for boldness and perhaps extralegal requirements are many."

So, according to the inspector general's report. The guidance is going to be used to provide a written facade of compliance with the law, but, in fact, what is going to take place off the record is to some extent different.

The inspector general on page 15 goes on to say, "The assistant secretary"—Susan Newman I believe it is—"planned for the Reading First guidance to include language that was not in the statute and exclude language that was in the statute.

"After reviewing the revision of the department's draft on the Reading First guidance, the assistant secretary for OESE," Ms. Newman "wrote the Reading First director, 'Under Reading First plans, I would like not to say "This must include early intervention and reading remediation materials," which I think could be read as "reading recovery." Even if it is the law, I would like it taken out.'"

We go to the question of it being the law, twice in the law, "based on scientifically based reading research, including early intervention and reading remediation materials, programs and approaches." We say that twice in the law, Section 120(d)(1) and 1203(b), and the secretary says she wants that taken out of the law because it might let somebody capture reading recovery, which many schools, districts, states and others use, that somehow that might allow it to happen.

So we are back to your giving her the signal earlier on that the opportunities for boldness and perhaps extralegal requirements are many. And they are.

"The Reading First director illustrated this strategy by providing the following examples in pre-reading notes documents: Providing expanded opportunities to students." This is Section F2 2(b) of the guidance. It says, "Providing expanded opportunities to students in kindergarten through Grade 3 who are served by eligible local educational agencies for receiving reading assistance from alternative providers."

I do not know what that sentence says, but you say, "We make absolutely no mention of this opportunity in the application because we do not like it and we do not want to open the door to this, but it is in the law and it needs to be addressed somewhere reasonably official—like the guidance—as a best compromise."

Then you go on to state another example. "Are there any required priorities for funds reserved to the states? Yes, a state educational agency shall give priority to carrying out the activities described in Question F2."

You go on to say again, "My belief is that this is a potential back door through which some of the money could flow to unwanted directions, and, therefore, required priorities for funds reserved for the states element of the law is not—not—in the application, but we do have to reflect it, as we know it exists somewhere in the place, and that is the guidance."

So you threw out the guidance to the states. Ms. Lewis and others looked at this and said, "This is the process by which we are going to work," and back door on your BlackBerry, you are undermining the integrity of the program. What was your commitment to the law and your apology is what, that mistakes were made, because that is kind of the mantra in the administration?

Mr. DOHERTY. As the e-mail that you cited shows, I was being pressured for not being bold enough. I was being pressured in another e-mail that the inspector general cited for not being bold enough. The directive that was given to me was to take such-and-such out. I indicated, as you read, that we were unable to do that.

Again, we worked with a team of people to decide which parts of the statute would be reflected in application criteria and which parts of the statute——

Chairman MILLER. That pressure came from whom? You mentioned that in your opening statement also.

Mr. DOHERTY. It is the woman that you mentioned.

Chairman MILLER. Ms. Newman?

Mr. DOHERTY. Yes, sir.

Chairman MILLER. The assistant secretary?

Mr. DOHERTY. Yes, sir.

Chairman MILLER. So she was asking you to violate the law?

Mr. DOHERTY. Well, I was just commenting on the slide that you put up there as far as "I want such-and-such taken out," and my response, as I remember it, in that message was, you know, "We cannot do that. We need to address this," and as I say, turning that statute into a program, into an application and into guidance involves judgment calls as to what goes where.

Chairman MILLER. Mr. Doherty, maybe that is the way the ethics standards in this program lapsed. You do not get to override the law because you are turning the law into a program.

Mr. DOHERTY. I did not mean to suggest that.

Chairman MILLER. Agencies and departments and nonprofit organizations and states struggle with this all the time, and they do not just decide at some point, well, we will just violate the law. You do not get to do that. You do not get to do that.

In this case, as pointed out, twice in the law that specific language is there. The department does not just get to ignore that.

Mr. DOHERTY. I am sorry if I suggested that I thought we were ignoring the law.

Chairman MILLER. Well, you suggested that because of logistics, because of the time frame, because you might get 50 applications all at one time—you have a whole litany of reasons why you did not have to abide by the law.

Mr. DOHERTY. We thought then and think now that we did abide by the law.

Chairman MILLER. Okay. With that, I will reserve the balance of time.

The committee will adjourn, and we will return promptly at the end of the last vote. It will be a little while, so if somebody wants to get a cup of coffee or something, feel free to do so.

[Recess.]

Chairman MILLER. Thank you very much. I apologize for the interruption here. This was supposed to be, when we scheduled this, a light day on the floor. It turned out to be a multiple-vote day on the floor.

The meeting will reconvene.

Ms. Lewis, you have listened to this conversation, and the inspector general spent some time on Kentucky. You, in your opening statement, went through some of the difficulties you have. I just wondered if you might have something you want to add in light of what you have heard back and forth here.

Ms. LEWIS. Well, I have been a bit curious about the panel review process from the beginning. We asked early on in the denials of funding to find out who was on our expert review panel, and we were told that we could not know who was on the panel.

As we looked at the summary of the reviews from the panel, we often found that the information we were given was vague, not

very helpful. It would say things like, "There are pieces in this that are not sufficiently scientifically based," but the panel review did not really give us specific information about what it was that was problematic in terms of our scientific basis.

I guess what I would want to say about the overall process is when I look at our first proposal and I look at our fourth proposal, I do not see anything really substantially different in terms of our plan. We had really hoped to have Reading First in our schools in the fall of 2002, which is why we really scrambled to put together a proposal in May of 2002. Of course, with the delays that we had, being denied three times, it put us a year behind in implementation.

Chairman MILLER. Did you have any awareness—or your team—or when you talked to others, since a lot of states were making application, that, in fact, the panel review had been intercepted, if you will, that what you saw was not reflective of the panel review? Did you assume what you were seeing was the panel review?

Ms. LEWIS. I assumed that what I saw in the comments from the summaries from the department that they reflected the panel reviews. As I mentioned earlier, I was given yesterday——

Chairman MILLER. When did you learn there were two versions?

Ms. LEWIS. Yesterday. I was——

Chairman MILLER. Mr. Higgins, that would not be unusual?

Mr. HIGGINS. That is what we found also.

Chairman MILLER. You say in your report to us, "While the panel chair summaries"—I guess which were supposed to be sent to the states, correct?—"provide constructive comments, the impact of the expert panel review's comments on the state revisions is uncertain because of actions taken by the department's Reading First office. After the panel chair submitted the panel chair summaries to the Reading First office, the Reading First director and his assistant created what they called expert review team reports."

That is what you saw. Is that correct, Ms. Lewis?

Ms. LEWIS. That is what I saw.

Chairman MILLER. "This was provided to the states. No other documents reflecting the expert review panel's comments were provided to the states. The department did not explain this practice in the review or guidance or in the Reading First guidance."

So, in fact, there was a misrepresentation being made to the states, and in your report—I do not know if this is exhaustive or not—you cite the state of Nevada, the state of New York and the state of Georgia where sort of back-channel, off-the-record actions are taken and/or the information just does not comport with the initial panel reviews.

Mr. HIGGINS. Right. Correct. We found that there were cases where the comments were changed, comments were left out, and there were additional comments added.

Chairman MILLER. Is that allowed in the law? Is that discretionary, or is it allowed?

Mr. HIGGINS. I would not think it would be allowed, but I do not know if——

Chairman MILLER. The panel reviews had specific duties under the law, as I understand it. Is that correct?

Mr. HIGGINS. Yes, but I do not think it got that specific about what was allowed and what was not allowed, but I certainly——

Chairman MILLER. Well, Mr. Doherty could have created this panel and not violated the law. He could have created this——

Mr. HIGGINS. Yes, definitely.

Chairman MILLER. He just created a fraud in terms of the states because they—I am not asking you to comment—got a misrepresentation of what the panels concluded or thought about their program.

Mr. HIGGINS. They did not get what the panelists said.

Chairman MILLER. So you had to go through, what, four submissions? Three submissions?

Ms. LEWIS. The fourth submission was funded.

Chairman MILLER. Well, it is interesting because we have the appearance again in the guidance and others of the law being followed, but there is this off-the-books activity by Mr. Doherty and others, and Kentucky was the recipient of some of that activity, but, apparently, you are tougher than you look because when you decided that you wanted him to put it in writing, you never heard back.

Ms. LEWIS. Never heard back, no.

Chairman MILLER. And you were funded.

Ms. LEWIS. What we asked him to put in writing was to say that we could not use the two programs.

Chairman MILLER. The inconsistency. Yes, yes.

Well, thank you very much. And, again, I am sorry that it went like that for the state in terms of the delay and the rest.

Excuse me one second. The inspector general—again Mr. Higgins—cited on page 19 that the "department intervened to release an assessment review document without the permission of the entity that contracted with the development."

Again, there was a process for an assessment review document to be created. I think this was prior even to the law, was it not?

Mr. HIGGINS. Yes.

Chairman MILLER. And that was to do what? That was to advise the states?

Mr. HIGGINS. Well, it was a review of the assessments, and what happened was that NIFL was uncomfortable with the results of the assessment, and they were not going to approve it. Mr. Doherty asked Mr. Kame'enui to put it on the Web site of the University of Oregon without the permission of NIFL.

Chairman MILLER. And if you wanted to see what assessment tools had been reviewed—in theory by the department—that was the presentation—the only place that this existed was on this Web site, was it not?

Mr. HIGGINS. The University of Oregon's Web site. And NIFL did not know it was on that.

Chairman MILLER. NIFL was supposed to create this. Were they not responsible for it?

Mr. HIGGINS. The assessment committee was to produce it under contract for NIFL.

Chairman MILLER. So, Mr. Kame'enui, how did you get this on the Web site without NIFL's approval?

Mr. KAME'ENUI. I received an e-mail from Mr. Doherty to post our findings from the Reading First assessment committee.

Chairman MILLER. And you assumed what, that he was speaking for the department?

Mr. KAME'ENUI. Yes.

Chairman MILLER. And so, as far as you were concerned, this was the official posting of these assessment tools.

Mr. KAME'ENUI. That is correct. I was not aware of NIFL's involvement in the support of the Reading First assessment at that time. That became evident later, not at the time.

Chairman MILLER. But, Mr. Good, you were aware of this?

Mr. GOOD. I was aware of what?

Chairman MILLER. The troubles with posting this? Were you involved in the creating of the assessment committee?

Mr. GOOD. I was not involved in the creation of the committee or the decision to post or not post on the Web site.

Chairman MILLER. Do you sit on the assessment committee?

Mr. GOOD. Yes.

Chairman MILLER. And the assessment committee selected a group determined sufficient for Reading First? You looked at 29—is that right?—and you selected 24.

Mr. GOOD. We examined 29. Weren't there 27 that had evidence of support?

Chairman MILLER. There were seven that were directly tied to members of the committee. Maybe that is the seven you are thinking of.

If we can look at Slide D, then I will try to conclude this. I do not think anybody is there. But what it points out is that you had 29 tools subject to review, I believe, again, 18 of which were personally recommended by assessment committee members, and then I think the remainder were taken off the list from the Southeast Education Lab, or one of those organizations. Then the assessment committee members then reviewed these, and they found 24 of them sufficient for Reading First, and we have seven of those sufficient tied directly to assessment committee members.

Mr. GOOD. That sounds about accurate.

Chairman MILLER. So yes. Does "conflict of interest" cross your mind at all when you hear that?

Mr. GOOD. As I say, we followed the standards of the academy in looking at that issue of conflict of interest.

Chairman MILLER. What academy?

Mr. GOOD. By that, I mean sort of the university world. If, for example, we are publishing a paper, that paper would be peer reviewed by other experts who know about it. We do not know that peer review group, and the person who does the review is not directly involved in the paper. So we followed really those standards as best that we could.

Chairman MILLER. What about when the people reviewing each other's papers know one another?

Mr. GOOD. This is frequently the case in the university world.

Chairman MILLER. The academy may want to review it as a potential conflict of interest.

Mr. GOOD. The person who has authored the paper never knows who the reviewers are.

Chairman MILLER. Yes. So you are suggesting that the members of the assessment committee did not know one another?

Mr. GOOD. We knew each other, but we did not——

Chairman MILLER. You did not know one another's products?

Mr. GOOD. And we knew each other's products. We were very public about that. But I do not know who reviewed DIBELS on that committee. So the specific people are blind to me, and for their products——

Chairman MILLER. I am out of time. We will have to come back to this.

I want to yield to Mr. McKeon.

Mr. MCKEON. Thank you, Mr. Chairman.

I yield 15 minutes to Mr. Castle, the subcommittee ranking member.

Mr. CASTLE. I thank both the Chairman for holding this hearing and the senior Republican for his interest in what we are doing here as well.

I have read the full notebook that was prepared for us, I have read your testimony, and I have listened to you here, and it is hard for me to conclude anything other than the fact that there were some conflicts of interest. There were ethical lapses here. I do not know if they were violations of the law or not. That is beyond my prerogative at this point. And I do not know if some of these things happened because of political or ideological or financial reasons or some combination of all of the above, but it all concerns me.

But there is a certain irony to all this, and that is that virtually all of you—and my own state of Delaware in an opening statement which I submitted—basically praise this program of Reading First. We hear a lot of negatives about No Child Left Behind, but this is one program which we hear virtually all positives.

So, hopefully, with the legislation that Mr. McKeon's introduced which I have cosponsored, working with Mr. Miller, we can straighten out some of these problems and put forth a program which generally does what all of you have indicated, which is to help the children of this country be able to read sooner and better.

I am going to start with—this is a very dangerous practice—a question I am going to ask all of you to answer. So, hopefully, you can be fairly brief in your answers.

We have heard a lot today about improper procedures and biases against certain reading programs, notably Reading Recovery and DRA, Diagnostic Reading Assessment. On the other hand, we know Congress's mandate to the department was to only fund scientifically based reading programs and assessments. In other words, the department was required to be biased against some programs. I do not think we can fairly answer the question whether the department was appropriately or inappropriately biased unless we know whether the programs were scientifically based or not.

Why was there a perception that certain programs, such as Reading Recovery and DRA, were not scientifically based, and were those perceptions accurate? Now some of you may feel you cannot answer that, but I want you all to take a stab at it.

Ms. Lewis, I would like to start with you and work that direction. Kentucky seems to have been hurt or biased against or whatever,

but you may not know the answer to that particular question. I would be interested in your views.

Ms. LEWIS. I can tell you how we tried to approach it. We went to technical assistance sessions with the U.S. Department of Education and the Reading First staff. As I point out in my testimony, we went to every technical assistance session, and one of them was on assessments.

We were trying to learn what the program staff meant when they talked about scientifically based reading research. We felt that it was our job to take on learning what that meant and share that information with our schools.

We looked into all the different assessments that we were considering using. We looked into their technical manuals. We looked into the information about their efficacy. We did lots of research with other states in terms of what kinds of assessments they were using and how effective they were. We also looked at the research on Reading Recovery.

Now sometimes when I look at scientifically based reading research, it almost sounds like it is in the eye of the beholder, and I am going to give you an example of this. The department has a Web site called The What Works Clearinghouse. Now I would assume that The What Works Clearinghouse would care about scientifically based research programs.

There are very few programs that make it on to The What Works Clearinghouse. Reading Recovery was just added to that list. It is a very narrow list, and I would assume that there are strong standards, high standards that programs would have to match.

So my confusion about scientifically based reading research is: How does one determine that? Is it based on real concrete criteria, or is there room for opinions and thoughts about a particular program?

Mr. CASTLE. Maybe we will get the answer.

Ms. LEWIS. We did our best in applying what we understood about scientifically based reading research.

Mr. CASTLE. Thank you.

Dr. Simmons?

Ms. SIMMONS. I am not familiar with the Diagnostic Reading Assessment, the DRA, so I cannot speak to that one.

But my knowledge as a reading researcher on Reading Recovery is based on a synthesis of research that was one in about 5 years ago that was published in the Educational Researcher that indicated that it was effective in some conditions, but I cannot recall the specifics of that.

But, overall, the conclusion was that after a summary of research and a review of that that it was not as effective as has been documented.

Mr. CASTLE. Thank you.

Dr. Good?

Mr. GOOD. I have not conducted a review of Reading Recovery or of DRA, and I have not done research on them. I am not qualified to say that they are or are not scientifically based.

Mr. CASTLE. Thank you.

Mr. Doherty?

Mr. DOHERTY. On the issue of the Diagnostic Reading Assessment and whether that particular assessment is valid and reliable—and in the case of Kentucky, the DRA was put forth for application—I can just say that from my memory four different psychometricians, four different folks extremely well versed and trained in determining whether assessments are valid and reliable, across six different panels came back to the department and said that the DRA was not valid and reliable for the purposes that had been suggested in the states. Not being a psychometrician myself, but requiring to have them on the panels, we in turn took that feedback and gave it back to the states; in one case, to Ms. Lewis in Kentucky.

As far as Reading Recovery is concerned, I do not have anything to add to Dr. Simmons' answer.

Mr. CASTLE. Thank you.

Dr. Kame'enui?

Mr. KAME'ENUI. Well, I think you posed the right question about how do we define scientifically based reading research, and I think it is fair to say that in educational research we have such an immature science, it is still formalizing, still developing, as Ms. Lewis noted.

The What Works Clearinghouse, which utilizes the highest rigorous standards—randomized control trials, quasi-experimental trials—to look at the reading research, just basically noted that Reading Recovery met the highest standards.

But prior to that, I think you noted it. It is very difficult to define scientifically based reading research. Up to the most current review of the research, Reading Recovery, the assessment, at least the judgment in the field, was that it did not meet the most rigorous standards, and there were other issues—the cost of it, the fact that it focused on individual students as opposed to groups of students and so on.

So I think we still have a lot to learn about that.

Mr. CASTLE. Thank you.

Mr. Higgins, I was going to skip over you because I think it is beyond your prerogative. If you have something quickly you want to add, I would be happy to hear it.

Mr. HIGGINS. No, I do not have anything to add. I do not think our office really has the expertise.

Mr. CASTLE. I did not think so either, sir.

Dr. Kame'enui, you stated during the assessment committee process, you never received guidance from the department or the contractor regarding conflicts of interest. Did the department or the contractor ever express any concerns about ensuring the impartiality of the committee's report or ask you what you were doing to ensure impartiality?

Mr. KAME'ENUI. No, it did not.

Mr. CASTLE. Let me ask Mr. Higgins then. Who has the responsibility to ensure that the contractors address these conflicts?

Mr. HIGGINS. Well, I think the department had a responsibility in its oversight capacity, but I do believe that this was contract with NIFL. Are you specifically talking about the RLAs?

Mr. CASTLE. Actually, I was asking more generally than that.

Mr. HIGGINS. Well, I think the department has a responsibility to monitor it.

Mr. CASTLE. Thank you.

Dr. Simmons, the inspector general's report highlighted your role in working with Maryland to develop their list of core reading programs. Could you tell us about that process and how you came to be involved in it, and were you then connected in any way to any of the programs ultimately chosen by Maryland, particularly Reading Mastery?

Ms. SIMMONS. I was actually surprised when I was reading the inspector general's report to see my name mentioned because I honestly had no recollection of that involvement. I do not have the e-mail documents that were referenced in that report, so I do not recall making recommendations to Maryland.

However, if I did, I was referring Maryland to the Oregon review of programs, and the Oregon Reading First Center conducted a review of core reading programs that included conflicts of interest and no one associated with the program was involved in that review.

And, no, I have no affiliation with Reading Mastery.

Mr. CASTLE. Thank you.

Let me ask this question, I think, of Mr. Doherty. From what we have heard, schools need a database system to go with DIBELS for the purpose of scoring the assessment and reporting the data. To what degree are you involved with the DIBELS database system operated out of the University of Oregon and how much are schools charged for that service and where does that revenue go?

Actually, I am going to ask that question to several people.

Mr. DOHERTY. Do you want me to start, sir?

Mr. CASTLE. Well, you can start, yes.

Mr. DOHERTY. Okay. If the first part of the question is whether I have any personal or professional connection to DIBELS itself, I do not. I do not now, and I never have in the past.

For the rest, well, there are DIBELS experts on either side of me, but my understanding is that DIBELS, because you asked about the cost, I think, is free to those who want to use it and download it from the Web.

Mr. CASTLE. Yes. Well, that is true, but there are also explanations of why that is complicated and why you need to subscribe rather than download it from the Web from reading the background on it.

Mr. DOHERTY. I defer to those who created DIBELS for a much better answer.

Mr. CASTLE. Let me go to Dr. Kame'enui then, if I may, on that question.

Mr. KAME'ENUI. Yes. My involvement with DIBELS is not as an author, not as a creator. At the time, I was director of the Institute for the Development of Educational Achievement, which is a research entity at the University of Oregon, and we developed, with support from the university, the database system that supports DIBELS.

As a result, schools can get access to that data system, use the data system. They can input children's data from DIBELS and get

reports back in about 30 seconds. The charge for the service of that is $1 per kid per year, primarily for the use of that data system.

The revenues go to the university. I do not profit from the data system at all, and because DIBELS is a unique and innovative kind of assessment tool, it takes about a minute to use to assess and evaluate a child's reading performance on different types of reading skills.

So schools are attracted to it because they can use it in a minute, get access to results in about a minute and a half from the data system and then use that information to make timely decisions about instruction that is required for children.

Mr. CASTLE. Dr. Good, your involvement with DIBELS?

Mr. GOOD. Thank you.

I have been involved with DIBELS data system from its inception. In fact, the prototype version of it was run by myself on my computer with research partners.

We have, with DIBELS, made public all of the decision rules and all of the procedures, and there is nothing unique about DIBELS data system in creating those reports or using those decision rules. In fact, we do strongly recommend a database to use with DIBELS, but there are very many different options of database that are available.

There is the AIMSweb data system which uses that information from our reports to report on DIBELS. There is the PMRN data system from Florida. There is the First Track——

Mr. CASTLE. I do not mean to cut you off, but I am going to move on, if I can, because I need to go through some other questions. Please sum up quickly.

Mr. GOOD. Okay. And also many school districts create their own data system using those public decision rules. So there are lots of choices. DIBELS data system is only one.

Mr. CASTLE. Dr. Simmons, what is your DIBELS involvement, if any?

Ms. SIMMONS. I am not an author of DIBELS, and like Dr. Kame'enui, I was at the University of Oregon at the time. Any revenues that were created by schools' choice to use the data system were always returned for the analysis and reports that were sent back to schools, and I made no profit from that.

Mr. CASTLE. Thank you.

Let me ask you a follow-up question, Dr. Good. The Reading Leadership Academies have attracted a great deal of attention, as we know. The inspector general found that DIBELS may have inappropriately endorsed at those academies.

What role did you play at those academies? Did you ever speak with your faculty colleagues or people at the department about having a role at the academies or how you could disseminate information about DIBELS through those academies?

Mr. GOOD. I participated in the development of the assessment module for the academy and presented that module, I think in Washington and in San Francisco. That presentation was vetted. I turned over that presentation to Department of Ed, and they reviewed it and the contents, gave feedback. I modified consistent with that and made that presentation.

Mr. CASTLE. My time is up, I think. May I ask one more question, Mr. Chairman?

One very last question to Mr. Doherty on DIBELS, and it relates to sort of where your testimony began. The assessment committee gave its stamp of approval to 24 different assessments. Why is it that DIBELS has faired so well in these stamps of approval?

Mr. GOOD. I——

Mr. CASTLE. Actually, that is to Mr. Doherty.

Mr. DOHERTY. My take on why DIBELS has faired so well has to do with the fact that, like the law itself, DIBELS looks at the things that are important to assess as the five components of reading—phonemic awareness, phonics, fluency, comprehension and vocabulary—and it had assessments for K, 1, 2 and 3.

So when the states were presented with the rather daunting task of needing to have valid and reliable assessments for all five components in four grades, they were really scrambling, and DIBELS looked at the reading assessment world in a similar manner, and it was ready to go.

Second, there was another program that is highly regarded, the Texas Primary Reading Inventory. At the time the law came about, TPRI, as it is known, did not have its third-grade portion completed. So, when states chose to go with DIBELS, they essentially got a lot of the assessment burden covered by that one instrument.

And lastly, although I understand that there is a $1-per-kid-per-year fee for the database service, it is also my understanding that it is free if you want it without the database service, and, frankly, I think that that also made it very attractive to states who are always trying to maximize their use of funds for something that seemed to fit so well and was free to them.

Mr. CASTLE. Thank you.

I yield back, Mr. Chairman.

Chairman MILLER. Without objection, I am going to ask for 10 additional minutes just to follow up on that point, and I probably will not use all of my own time. With no objection. Thank you.

Like a lot of questions, there is more than one answer. Mr. Doherty has one answer, and the inspector general has another, and in this case, the answer to Mr. Castle's question, in Finding 2, the inspector general says that the "secretary's Reading Leadership Academy handbook and guidebook appeared to promote DIBELS." I am shorthanding, skills assessment test. "The Reading First statute required the use of screening diagnostics, and we found the department appeared to promote by including articles featured in the handbook and the guidebook."

Mr. Inspector General, Mr. Higgins, this was the only article that was included in the guidebooks and the handbooks that were handed out to the states and at these training sessions. Is that correct? This 29-page article was the only one that was included on DIBELS?

Mr. HIGGINS. Correct. On both the handbook and the guidebook.

Chairman MILLER. So DIBELS was approved by that original committee where they are reviewing one another's products before the law was passed where there were 29 products, 24 were found sufficient and seven were linked to the members of the committee who knew they were reviewing one another's works.

Mr. HIGGINS. Right.

Chairman MILLER. And then on the assessment committees, we have Mr. Kame'enui—is that right?—Ms. Simmons, Mr. Good, who are on those committees. Is that correct? And Mr. Kame'enui's school is getting royalties from DIBELS, Mr. Good is getting royalties from DIBELS, and Ms. Simmons is getting royalties from DIBELS, correct? You are not getting——

Ms. SIMMONS. No. There were no royalties from DIBELS. The dollars for the services went back to the University of Oregon.

Chairman MILLER. But in your publishing with Mr. Kame'enui where you have DIBELS included in your textbook, I guess, I would say you are publishing now with DIBELS in your product. Is that correct?

Ms. SIMMONS. I am not aware of that.

Chairman MILLER. It is not a part of—what is the textbook that you put together with Mr. Kame'enui? What is the name of it?

Ms. SIMMONS. The intervention program?

Chairman MILLER. Yes.

Ms. SIMMONS. It is called the Early Reading Intervention Program.

Chairman MILLER. And that is packaged with DIBELS. Is that correct?

Ms. SIMMONS. It is not.

Chairman MILLER. It is not packaged with DIBELS.

Ms. SIMMONS. No.

Chairman MILLER. Is that right, Mr. Kame'enui?

Mr. KAME'ENUI. I do not think it is, sir, but I have been away from the University of Oregon and from the publishing world for about 3 years. So, at the time, it was not.

Chairman MILLER. This is the product by Scott Foresman?

Mr. KAME'ENUI. The Early Reading Intervention is published by Pearson/Scott Foresman. That is right.

Chairman MILLER. And this is Early Reading Intervention. Is that the product?

Ms. SIMMONS. That is the kindergarten intervention, yes.

Chairman MILLER. Yes. And you were negotiating with Scott Foresman while you were on the committee?

Ms. SIMMONS. While I was on the assessment committee?

Chairman MILLER. Yes.

Ms. SIMMONS. I was working with Scott Foresman, yes, but not on anything related to DIBELS.

Chairman MILLER. Well, you were working on Early Reading Intervention, which is published with DIBELS.

Ms. SIMMONS. No, sir. Early Reading Intervention does not have DIBELS.

Chairman MILLER. Well, I may be wrong, but that is the publisher.

Ms. SIMMONS. The Early Reading Intervention does not have DIBELS. You may be speaking of the Scott Foresman program which was published in 2006 that I am now an author of.

Chairman MILLER. Which is what?

Ms. SIMMONS. It is a reading program that was published in 2006 that is a kindergarten through Grade 3 reading program.

Chairman MILLER. What is the name of it?

Ms. SIMMONS. It is Scott Foresman. The name of it is Reading Street.

Chairman MILLER. Okay.

Ms. SIMMONS. Yes. It was published in 2006.

Chairman MILLER. So you were negotiating with Scott Foresman when you were on the assessment committee?

Ms. SIMMONS. No, sir. Not about that.

Chairman MILLER. Not about that?

Ms. SIMMONS. No.

Chairman MILLER. So you are receiving no royalties from DIBELS?

Ms. SIMMONS. No, sir.

Chairman MILLER. But, Mr. Kame'enui, are you?

Mr. KAME'ENUI. I do not receive any royalties from DIBELS.

Chairman MILLER. The center does?

Mr. KAME'ENUI. I am sorry.

Chairman MILLER. Does the center at Oregon?

Mr. KAME'ENUI. The center receives support from the university to continue to support the database system.

Chairman MILLER. And, Mr. Good, you do. You receive royalties. Is that correct?

Mr. GOOD. Yes. I am with Dynamic Measurement Group, and Dynamic Measurement Group is paid royalty fees from Sopris West for the published version of DIBELS.

Chairman MILLER. Which you benefit from.

Mr. GOOD. I do not benefit directly from those fees. Those fees are held in trust, and we spend them on sort of redevelopment of DIBELS, research on DIBELS. Those fees do not go directly to——

Chairman MILLER. And that is the organization you work for.

Mr. GOOD. But they do go to the organization I work for, correct.

Chairman MILLER. So you work for what? What is it called?

Mr. GOOD. Dynamic Measurement Group. It is DMG.

Chairman MILLER. Do you work for them?

Mr. GOOD. Yes.

Chairman MILLER. Are you a shareholder?

Mr. GOOD. Yes, I am a 50 percent shareholder.

Chairman MILLER. Oh, I like to work for those kind of companies.

Well, maybe that adds something to the question of why DIBELS is so pervasive across this Reading First Program. When we see the extent to which through almost every step that was critical to the states making decisions, we either have a conflict of interest or we see where the individuals responsible for running the program simply decided not to obey the law, and it has led to this situation.

With that, I would like to yield to Mr. Yarmuth. Is he here?

How much money comes into DMG from DIBELS?

Mr. GOOD. Actually, I might have to pull that out.

Chairman MILLER. While you are looking for that information, Mr. Yarmuth is here.

Mr. Yarmuth, you are recognized for 5 minutes.

Mr. YARMUTH. Thank you, Mr. Chairman.

It gives me particular pleasure to welcome Ms. Lewis, a constituent of mine and someone who has worked very diligently to improve education in our state.

Ms. Lewis, when you heard Mr. Doherty talking about the types of things that they considered in applications and the emphasis on criteria and the mention that there was never a need to mention individual program providers, what was your reaction to that? Did that seem consistent with your experience?

Ms. LEWIS. It is consistent with our experience in terms of reading programs, and it is true that we did not name any reading programs or any intervention programs in our proposal. We did, however, name the assessments. Again, this has been awhile, but I do not know why we would have named the assessments, had we not been required to do so.

We felt that we had legislative cover, so to speak, in terms of not listing core reading instructional programs, but we did not feel that we had any kind of opt-out situation in terms of the assessments. We went to all the technical assistance workshops. We went to the ones on assessments. We put together what we felt was required, and we did name the assessment programs in our proposal.

Mr. YARMUTH. And to reinforce and to clarify what you had said earlier, you made three applications which were rejected and then a fourth that was accepted, and you said that there was nothing substantially different from the first one to the fourth one. What about from the third one to the fourth one?

Ms. LEWIS. In the third one, we did include DIBELS. That is when we started the inclusion of DIBELS in that process. And then in the fourth one, we removed DRA. Those were our big changes in terms of our proposal.

Mr. YARMUTH. And in terms of the criteria and all the other factors related to the Reading First Program in Kentucky, those were the only two significant changes.

Ms. LEWIS. We had questions along the way about our professional development plans. We were guided by our technical assistance team from RMC to name particular individuals from particular universities. In fact, we were encouraged to include presenters in our professional development from the University of Oregon and from Texas.

At first, in our first couple of proposals, we were trying to make the argument that we have many people in Kentucky that meet the criteria that were stated for the professional development providers in terms of their experience with scientifically based reading research.

If you look at our last proposal, I believe we did add information that we would contact other individuals, and, in fact, when I got the reviewer notes from yesterday, the reviewers were quite happy to see that we had named particular individuals from those particular universities.

Mr. YARMUTH. So is it safe to say that, in your opinion, the pivotal factor in the ultimate acceptance of your proposal was the fact that you had included DIBELS and dropped DRA?

Ms. LEWIS. Yes.

Mr. YARMUTH. And that was the only significant factor?

Ms. LEWIS. Yes.

Mr. YARMUTH. Thank you.

Mr. Doherty, we have talked today a lot about conflicts of interest concerning the screening panel. Can you tell me whether you had any conflicts of interest in this process at all?

Mr. DOHERTY. In this process?

Mr. YARMUTH. Yes.

Mr. DOHERTY. My wife is a part-time consultant for an organization that is involved with Direct Instruction, and I made the department aware of that. She has never worked in a Reading First school. She only works part-time in Baltimore, Maryland. So, in my opinion, I did not have and do not have now any conflicts of interest.

Mr. YARMUTH. But isn't it true that in 2002 you listed her in terms of the required conflict of interest disclosure because she had received income above a certain threshold from DI?

Mr. DOHERTY. That is correct. I did fill out paperwork that indicated my wife's employer and how much she made.

Mr. YARMUTH. But you did not include that in subsequent years. Was there a change in the situation?

Mr. DOHERTY. There was no change in the situation. The subsequent years was an oversight on my part, but in no way changed the fact that I had declared my wife and her part-time employment and had an official memo on the file to that effect.

Mr. YARMUTH. Looking back over this whole process, Mr. Doherty, is there anything that after listening to the discussion today that you would have done differently, that we should take as instruction as to what we should do differently in terms of a person in your position in the process that you supervised?

Mr. DOHERTY. Yes. I think that, although we endeavored from the first days to follow the conflicts of interest protocols and worked with the Office of General Counsel to do so, we obviously did not do a very good job of keeping the perception of conflicts of interest from taking root and, frankly, dogging the program from the beginning.

So I think it is very clear that we and I did not do the kind of job we wanted to, although we endeavored to do so and followed the rules as they were written.

But your point is well made. I definitely think to keep these kinds of impressions from dogging a very successful program, we should change and improve our procedures, yes.

Mr. YARMUTH. Thank you.

Thank you, Mr. Chairman.

Chairman MILLER. Will the gentleman yield? Will the gentleman yield?

Mr. YARMUTH. I will yield.

Chairman MILLER. In response to this question, you filled out the form about your wife's employment on the advice of the general counsel. Is that correct?

Mr. DOHERTY. Yes. When I originally filled out the form and sent it in, shortly thereafter, I was contacted by the Office of General Counsel and asked, "Do you have any spousal employment?" and I said, "Yes, I do." They said, "Well, you need to add that to the form." I verbally over the phone with this person talked about my wife's employment. It was added——

Chairman MILLER. This is an annual form? This is a department form?

Mr. DOHERTY. It is an annual form.

Chairman MILLER. So then you did not fill it out after that?

Mr. DOHERTY. To the best of my recollection, 15 months after this conversation with the Office of General Counsel, I filled out the next form, and I proceeded to make the same innocent mistake that I had made on the first one, which is to very carefully list my mutual funds and other things, and I——

Chairman MILLER. So, after you were advised by the general counsel, you made an innocent mistake again to not list it?

Mr. DOHERTY. That is correct. It was an oversight on my part.

Chairman MILLER. You are looking at people here that have to fill these forms out every year. I mean, it is just amazing, your image of the law.

Mr. McKeon?

Mr. MCKEON. Mr. Castle? Five minutes for Mr. Castle.

Mr. CASTLE. Well, thank you, Mr. McKeon.

To Dr. Good, you mentioned that DIBELS is available for free on the Internet or could be bought through Sopris West. How do you say it? Sopris West? And since it is available for free, why would schools pay for it at all through Sopris West?

Mr. GOOD. I do not have exact numbers of the numbers of schools who are using DIBELS because it is freely downloaded. A lot of people do it, and we do not have a record of it.

Mr. CASTLE. Do you know how many are paying for it?

Mr. GOOD. I have too many papers going around, but, for last year, there were about 800,000 students who had been tested with DIBELS using a paid version of it. I think we are tracking probably close to about three millions students now in DIBELS data system. I think there is probably at least another 800,000 in PMRN and other data systems. So I think maybe a third to one-quarter are using a published version as opposed to a freely downloaded version. It is a very rough kind of guestimate of it.

Mr. CASTLE. When schools use DIBELS, they must also find a way to collect and report the data. I am told that you are involved with a company called Wireless Generation that provides those services. Is that correct?

Mr. GOOD. Yes. Wireless——

Mr. CASTLE. And if so, what is the nature of that relationship?

Mr. GOOD. I am not sure of our initial date for working with Wireless Generation, I would have to look that up, but we have a contract, an alliance agreement, with Wireless Generation.

Mr. CASTLE. You say we. Who is we?

Mr. GOOD. Dynamic Measurement Group. Dynamic Measurement Group has a relationship with Wireless Generation.

Mr. CASTLE. And there an economic part of that contract?

Mr. GOOD. Yes, there is.

Mr. CASTLE. And can you explain briefly how that works?

Mr. GOOD. Wireless Generation makes a payment to the Dynamic Measurement Group of 40 cents per child that they are doing as an alliance payment.

Mr. CASTLE. Okay. What steps did you take to avoid any conflicts of interest or the appearance of conflicts? That has been a major

underlying theme here. Did the Western Technical Assistance Center, the RMC Research Corporation or the department ever request formal disclosures from you or otherwise screen your involvement for conflicts of interest? Did the university require you to disclose conflicts of interest before being hired by their center?

Mr. GOOD. No.

Mr. CASTLE. No to all of the above?

Mr. GOOD. No to all of the above. I have always been public about my role in DIBELS and involvement in DIBELS throughout all of these steps. I have not been particularly concerned about a conflict of interest in that regard in part because I have been very public about my role in DIBELS, but also in part because we have offered the assessment for free on the Internet, and we have always done so, and we are committed to continuing to do so.

Mr. CASTLE. This is just a comment. There seems to be sort of a loose interpretation of these conflicts or a difference between government agents, employees and academics in this field based on some of the best language I have heard here today.

Let me turn to a question for Dr. Simmons and Dr. Kame'enui.

Dr. Simmons, you mentioned in your written statement a document you co-authorized with Dr. Kame'enui called "A Consumer's Guide to Evaluating Core Reading Programs, Grades K-3." That document has received significant attention, and the inspector general highlighted a few cases where states were referred to in this document.

How is it that this document came to be viewed as the Reading First document containing a federally approved list of programs? Did you or anyone else that you are aware of ever use their involvement in Reading First to push this guide into programs included in it?

I will ask both of you that question.

Ms. SIMMONS. The Consumer's Guide was a document that was created and published in 2000, and it was created to help schools identify criteria that are important in a research phase that should be part of reading programs. It was never developed for Reading First.

I remember being asked by a colleague at the University of Oregon if we had any tools that could help evaluate reading programs, and I reminded him of the Consumer's Guide, and I had no idea it was going to be used in Reading First, and I never encouraged or asked it to be used as a Reading First document.

Mr. CASTLE. Dr. Kame'enui, can you shed any further light on that issue?

Mr. KAME'ENUI. I do not think I can. I think Dr. Simmons is right. This is a development. This is an instrument, a tool, an evaluation tool that we developed at a center that we had from 1991 to 2002. We did a lot of work with publishers at the time. We created this tool, and it was adopted by Reading First Program. It is probably one of the few tools available to evaluate reading programs, and there is no proprietary interest or profit from that particular tool.

Mr. CASTLE. Thank you.

Thank you, Mr. Chairman.

Chairman MILLER. Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Inspector General, aside from a possible referral to the Department of Justice and in addition to your responses to Mr. McKeon on possible changes in No Child Left Behind, do you have other ideas where we could change No Child Left Behind that would minimize these problems?

Mr. HIGGINS. Not at this time. All of the recommendations that we have are in our reports.

Mr. KILDEE. Is there any thought of referring some of these matters to the Department of Justice?

Mr. HIGGINS. We have referred some of these matters to the Department of Justice.

Mr. KILDEE. You have referred some?

Mr. HIGGINS. Yes.

Mr. KILDEE. So some of these matters are before the Department of Justice at this time.

Mr. HIGGINS. Yes.

Mr. KILDEE. Thank you very much.

Inspector General, Mr. Doherty has testified that the inspector general's findings of mismanagement were a foregone conclusion. Your office has spent a great deal of time on this matter, putting out six or seven reports.

Can you comment on Mr. Doherty's suggestion that your office did not conduct an impartial investigation?

Mr. HIGGINS. Well, I do not agree with him. We have safeguards in place. We have standards that we have to follow. I just do not agree with it. May I also point out that the department agreed with our reports?

Mr. KILDEE. The department did agree with your reports.

Mr. HIGGINS. They also adopted all of our recommendations and have acted swiftly to put most of them in place already.

Mr. KILDEE. Okay. So they, in a sense, validated your report then.

Mr. HIGGINS. Well, that is my position, yes.

Mr. KILDEE. Okay. Do you use the same basic standards that you always use as inspector general when you are investigating this area?

Mr. HIGGINS. No. We use standards put out by the General Accounting Office for the audits, and we use standards put out by the president's Council on Efficiency and Effectiveness for the inspections, with the one inspection.

Mr. KILDEE. Mr. Doherty, did you voluntarily resign from the department, or were you asked to resign?

Mr. DOHERTY. I would say it was strongly suggested to me that I ought to resign.

Mr. KILDEE. All right. Who else resigned at that time, and did they resign voluntarily or were they strongly suggested to terminate their employment?

Mr. DOHERTY. Sir, is your question who else voluntarily resigned at the time?

Mr. KILDEE. Yes. At the time.

Mr. DOHERTY. At the time that I did?

Mr. KILDEE. Yes, yes.

Mr. DOHERTY. I do not recall anyone resigning along with me at about the same time, sir.

Mr. KILDEE. Not Assistant Secretary Newman?

Mr. DOHERTY. No, sir. She left the department in January of 2003 or December of 2002, as best as I can recall.

Mr. KILDEE. Okay. So, when these matters broke, you were strongly suggested, as you put, that you terminate your employment?

Mr. DOHERTY. Yes, sir, that is the impression that I got, that it was suggested to me that I resign or else I might be fired.

Mr. KILDEE. I thank you.

And I yield back the balance of my time, Mr. Chairman.

Mr. MCKEON. I yield 5 minutes to Mr. Castle.

Mr. CASTLE. Thank you, Mr. McKeon.

Ms. Lewis, let me go back to you. Let me, first of all you, thank you for being here. You have had a great deal of influence, I think, in our thinking here, and I am glad to hear that Reading First really has had a positive impact on your state in spite of some of the problems we have heard today. I keep hearing that throughout all this testimony. I think all of us are troubled by your experiences.

You mentioned this, so I am not sure I understood where we are with this. Did you ever receive any feedback as to why DRA was not viewed as an acceptable assessment by the peer review team or the department?

Ms. LEWIS. No. In the summaries that were sent to us by department staff, it was simply stated that DRA was not sufficiently valid and reliable, but there was no explanation as to why.

Mr. CASTLE. Okay. Thank you.

To you again, Ms. Lewis, if Congress created a more transparent peer review process that provided states the opportunity for direct interaction with the peer reviewers, do you think that would help prevent any repeats of what you and perhaps others have experienced?

Ms. LEWIS. Yes. I think that we would have heard what the concerns were. We would have been able to get greater detail about their concerns and their guidance. But as it was in many cases, we were simply guessing about what the problems were. But I think had we been able to communicate with the panelists, we would have had a greater understanding and been able to make the changes we needed to make.

Mr. CASTLE. Okay. Thank you.

Mr. Higgins, let me go to you finally. I know you have made in your reports a lot of suggestions. I also know the department either willingly or begrudgingly has agreed to many of the suggestions which you have made. Do you have any other suggestions or anything else you want to highlight that should be done?

As you know, Mr. McKeon has introduced legislation. I think all of us on this committee want to resolve this problem. We believe in Reading First, but we believe in running these programs correctly, and I was just wondering if you have anything you want to feature or anything beyond anything you have already said that you want to bring up to us.

Mr. HIGGINS. Not at this time, but I would like the opportunity to think about it and follow up.

Mr. CASTLE. Okay. You can submit further testimony in writing, and we can certainly submit a question to you.

Mr. HIGGINS. Okay. Thank you.

Mr. CASTLE. I would be personally very interested in hearing that myself. I think it is important.

Mr. HIGGINS. Thank you.

Mr. CASTLE. Thank you.

I yield back, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Doherty, I was intrigued when you said you were not required to screen for conflicts of interest because it was not specifically mentioned in the law. Do we need to put that in the law? I mean, most people would think that that would be just kind of perfunctory that you had checked for conflicts of interest? People with conflicts of interest just would not be qualified to serve on these committees. Is that optional?

Mr. DOHERTY. I agree with you that most people would assume that conflicts of interest screening would be done, and that is why we did it with Reading First, even though it was not required. I think perhaps making it required would be a good change, yes.

Mr. SCOTT. Well, some of us would think it would be so inherently expected that we would not have to put it in writing, but with some I guess it may be so.

You have indicated that these panels complied with the law. Was it your understanding that the law required these panels to have balanced representation from four sources—the Department of Education, National Institute for Literacy, National Research Council, the National Academy of Science and the National Institute for Child Health and Human Development? Is that your understanding, that the law required these panels to have balanced representation?

Mr. DOHERTY. My understanding of the law was that those four agencies must all nominate individuals to the panel.

Mr. SCOTT. The law did not require the panels to be balanced?

Mr. DOHERTY. Off the top of my head, sir, I do not know whether that word was part of the statute, but I do know that all agencies needed to nominate members. We got nominees——

Mr. SCOTT. Based on what when you read the law, you thought you were in compliance?

Mr. DOHERTY. Yes.

Mr. SCOTT. We have talked about conflicts of interest, and we asked Dr. Good how much money he was receiving.

Mr. Higgins, did you go through to find out how much money was being generated by these decisions?

Mr. HIGGINS. No, we did not.

Mr. SCOTT. How much money the University of Oregon was getting when they apparently had an interest?

Mr. HIGGINS. No, we did not look into the financial aspects of this.

Mr. SCOTT. Did you look to see if anyone was getting campaign contributions as a result of any of these decisions?

Mr. HIGGINS. No, we did not.

Mr. SCOTT. Mr. Doherty, how much money was involved in these decisions and was anyone getting campaign contributions as a result?

Mr. DOHERTY. I am sorry. How much money was involved in which decision, sir?

Mr. SCOTT. Well, if you are helping one organization, DIBELS, did the University of Oregon get some money and another partnership was getting some money? How much money are we talking about?

Mr. DOHERTY. Like the others, I have never heard and do not have a sense of how much money is involved in these particular decisions, and I do not know of any campaign contributions.

Mr. SCOTT. Does anybody on the panel know of any campaign contributions that were affected or potentially affected or people giving money that might have influenced any of the decisions?

Ms. Lewis, did I understand your testimony to say that you did not see any substantive difference between your application when it did not have DIBELS as the sole provider and when it did have DIBELS as the sole provider? There was not any other substantive difference?

Ms. LEWIS. We do have other assessments in our proposal.

Mr. SCOTT. Did that seem to make the difference? Was there any other substantive difference where they could have legitimately turned down the first couple of applications and approved the fourth, other than——

Ms. LEWIS. We felt we were ready to roll in May of 2002 and go forward with implementing Reading First in our schools.

Mr. SCOTT. Mr. Higgins, if someone is inappropriately denied, is there any remedy?

Mr. HIGGINS. Well, I guess there would be appeal to the secretary. You mean a district was——

Mr. SCOTT. Well, after the fact. I mean, didn't Kentucky lose a year of funding?

Mr. HIGGINS. I do not know that there is any remedy.

Mr. SCOTT. Not yet.

Mr. HIGGINS. Correct.

Mr. SCOTT. And, Mr. Higgins, can you indicate whether or not the Department of Education has changed its policy to prevent this kind of thing from happening in the future?

Mr. HIGGINS. Well, like I said previously, we made a series of recommendations. They very quickly accepted them, and we have seen them take a lot of the actions already. We have not evaluated the actions yet, and we plan to follow up on that.

Mr. SCOTT. Have they taken action to avoid conflicts of interest in the future? Are you aware of anything?

Mr. HIGGINS. Specifically, I do not know on that one.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Hare?

Mr. HARE. Mr. Doherty, I am deeply troubled by a couple of the e-mails that you sent.

I wonder if we could put Slide E up.

In this, it says, "We want to beat the 'expletive deleted' out of them in a way that will stand up to any level of legal and whole

language apologist scrutiny, hit them over and over with the definitive evidence that they are not SBRR, never have been and never will be. They are trying to crash our party, and we need to beat the 'expletive deleted' out of them in front of all the other would-be party crashers who are standing on the front lawn waiting to see how we welcome these dirt bags."

My two questions are: Could you tell the committee who are the party crashers and the dirt bags are?

Mr. DOHERTY. First, please allow me to say that I deeply regret the coarse language I used in that e-mail. It was written to a close colleague, and it was unprofessional, and I deeply regret it.

When I referred, regrettably, to the crashing of the party, the party I was referring to was the statutorily required fact that only scientifically based instructional materials could be funded by Reading First.

So, in this regrettable image that I have created, we were trying to energetically enforce that law and keep programs that were not aligned with research from getting into the program where we feel the program would have been watered down and would have become like so many other programs.

We feel the program has been successful because of our energetic implementation of this good law.

Mr. HARE. Well, I would concur that I think your e-mail really went over the line.

If I could maybe have Slide C up for the other e-mail, please.

It says, "This confidential update comes after a direct call I made to Maryland after a suggestion from Silbert. This clarification represents a marked shift from their earlier comments and, although not settled completely yet, bodes well for DI in Baltimore. Who knows Michael Coyne, the assistant professor at the University of Connecticut? Well, we need to ensure that when Maryland does do its application of Consumer Guide that Reading Mastery, a DI reading program published by McGraw-Hill, is not relegated to supplemental status, which would be horrible for so many schools in Baltimore."

My two questions to you, Mr. Doherty, are: Who is Mr. Carnine and who is Mr. Silbert, and why were they getting updated from you, and why should they be involved in this whole selection process by Maryland?

And my second part to that question, it is my understanding that prior to working at Reading First, you were the executive director of Baltimore Curriculum Project which implemented Direct Instruction beginning in 1996. So can you explain what Direct Instruction is and why you are advocating for Reading Mastery, a Direct Instruction project?

Mr. DOHERTY. Yes. First, Mr. Carnine and Mr. Silbert are affiliated with the University of Oregon and also affiliated with the Direct Instruction Program which is a family of different programs of which Reading Mastery is one.

That particular e-mail came after the state of Maryland, as I recall from 2002 or 2003, had decided that Reading Mastery was one of their scientifically based programs. They were entering a follow-on decision as to whether that scientifically based program was a core comprehensive program or a supplemental program.

In my experience with Direct Instruction, it is a core comprehensive program and I did send, you know, that e-mail in order to help ensure that a program that the state of Maryland had already chosen would be reviewed so as to classify it correctly.

Mr. HARE. So you do not have any problem with the e-mail then?

Mr. DOHERTY. Certainly now, as I look back at this e-mail and what has ensued, I certainly wish I had not sent that e-mail, but I did not think then and do not think now that I was pushing this program on Maryland because they had already made their decision to include Reading Mastery. As I say, they were making a follow-on decision as to whether this program was a core comprehensive program or a supplemental program.

Chairman MILLER. Will the gentleman yield?

Mr. HARE. Yes, I certainly would.

Chairman MILLER. I am using your time.

But it is just kind of interesting in response to your question, the one law you decided to strictly enforce was the law you could use to keep party crashers from participating in this process.

I thank the gentleman for yielding.

Mr. HARE. I yield back the balance of my time, Mr. Chairman.

Chairman MILLER. Ms. Shea-Porter?

Oh, excuse me, Lynn. I did not know you came back.

Ms. WOOLSEY. You can go ahead.

Chairman MILLER. Okay.

Ms. SHEA-PORTER. Thank you, Congresswoman.

And thank you, Mr. Chairman.

I have to say, first of all, Mr. Doherty, that I am very, very concerned about the tone of paternalism and heavy-handedness that comes from you. And I am concerned because, being familiar with education myself and knowing how states sometimes view the federal government and the Department of Education, this reflects very poorly on the department because it does look as if everything was orchestrated from the department, but, apparently, it was orchestrated in large measure by you, and I am deeply disturbed by this.

What we have been able to do with federal funds is improve children's ability to read, and we do not want the American public to lose confidence in this, and by doing something like this, they do lose confidence. They wonder if they are fully represented. You have had complaints from other programs that thought it was a fair, level playing field, and it was not, and I find that very, very disturbing.

My questions are for Mr. Good, though.

Dr. Good, your written statement for the record highlights many years of research on DIBELS, and I am assuming that federal grant funds may have been involved at some point during your research. If so, can you tell me how much and what it was used for?

Mr. GOOD. DIBELS has really been sort of a loose research effort for a number of years and formally published under the name DIBELS starting in about 2003, is when the published version was first available. Prior editions of DIBELS were known under CBM Pre-Reading, under Primary Prevention of Early Academic Problems and under Individual Growth and Development Indicators.

Federal funds were used to support the initial research and development on the measurement technology. DIBELS 4th edition was based largely on prototype measures that were developed with federal funds and also other measures that had been developed for research purposes under other projects. DIBELS 5th edition was a mixture of those prototype measures developed with federal funding and also measures that were developed with personal and private funds.

DIBELS 6th edition then was reinventioned using the technology but not using any federal funds to develop the measures. All of the items were developed anew. All of the forms were developed anew. So no federal funds went into the development of DIBELS 6th edition.

Ms. SHEA-PORTER. But federal funds did go into the previous ones.

Mr. GOOD. Federal funds did go into the development of the measurement technology, and that measurement technology is used then by other test publishers as well and other tests are available with that.

Ms. SHEA-PORTER. Well, I would like to point out the good work, first of all, that federal funds can do in gathering some research that is helpful to America. However, I am concerned about that because if federal grant money was involved in development of what is now DIBELS—and how many people were involved in its creation?—how did you wind up with the DIBELS copyright?

Mr. GOOD. We reinvented DIBELS off campus with our own personal and private funds, in part so that we could control the copyright and continue to maintain a free version of DIBELS available on the Web.

Ms. SHEA-PORTER. Dr. Good, could you rephrase that for me, please? You used federal funds in the research.

Chairman MILLER. On campus.

Mr. GOOD. We did use——

Ms. SHEA-PORTER. To gather the research.

Mr. GOOD. We used federal funds for research and development of the technology that goes into the assessment. For example, federal funds developed the technology for Oral Reading Fluency as well, and we have built upon that technology as we implemented DIBELS.

Ms. SHEA-PORTER. So, in other words, it was federal money, taxpayers' money, that created the base upon which you created your company.

Mr. GOOD. Yes. Federal funds created the knowledge base, the technology that we used to apply to develop the specific form that is DIBELS 6th edition. The federal funds supported the knowledge building, but they did not support this specific edition, DIBELS 6th edition.

Ms. SHEA-PORTER. Okay. Well, let me ask you then. You could not have created DIBELS without taxpayers' money for the research. You had to have the research in order to create your final product.

Mr. GOOD. We had to have the knowledge base and the technology to develop this final product.

Ms. SHEA-PORTER. Then may I ask you why you own it instead of the American people?

Mr. GOOD. Why I what?

Ms. SHEA-PORTER. Why your company is yours instead of belonging to those who paid for it, why you did not keep it inside the university or inside a setting that would give access and continue to develop it based on the fact that the American people paid for this?

Mr. GOOD. The American people paid for the development of the knowledge. We created that knowledge, and we made that freely and publicly available for people to use, and others are using that knowledge as well.

We created Dynamic Measurement Group in part to protect our ability to give the measures away for free. When we talked with the University of Oregon and about our desire to have control over publication of it, they were not interested in making that assurance. So we reinvented and we redeveloped the measures separate from the University of Oregon so that we could give them away for free.

Ms. SHEA-PORTER. Once again, I would like to mention I am disturbed by this, and also that I do not believe it is totally for free because I have been looking at what they are paying to have the handheld wireless set. So it is actually not for free. If they really want to maximize its use and have it make some kind of context, then they need the rest of the technology that you are selling.

Thank you.

Chairman MILLER. Ms. Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman. This is quite a hearing. Thank you.

So here is what I am getting out of it before I ask my questions. It seems like you are telling us, some of you up there, that there is only a very small group of experts in this country that would be qualified to write the rules, provide the overview of the program, train to review, recommend, and possibly profit from this very positive No Child Left Behind-mandated program.

I mean, this is a huge country of wonderfully educated people. I am having the hardest time thinking that there is only a small group that can do all of this and that there was no room for any independent oversight, that there were no experts out there that did not have their, for lack of a better way to say it, finger in the pie in one way or another.

Mr. Kame'enui—I do not think I got it—I think you are one of that very small group. What reading products did the state of Oregon select for Reading First?

Mr. KAME'ENUI. I am sorry. What reading products?

Ms. WOOLSEY. What reading products?

Mr. KAME'ENUI. I cannot tell you what reading products the state of Oregon selected for Reading First. I imagine they made available a number of products that school districts could select from.

Ms. WOOLSEY. So, in your capacity, did you refer anyone to the Oregon list of approved products while you were part of the Reading First initiative or involved with the Reading First initiative.

Mr. KAME'ENUI. Yes. If people asked, I referred them to the curriculum review that the state of Oregon, the Oregon Reading First

Center, conducted to evaluate a range of reading programs. That is right. I did refer them.

Ms. WOOLSEY. And did you have any financial interest in the outcome of any of the programs that you recommended?

Mr. KAME'ENUI. At the time that I was director of the Oregon Reading First Center, I had an interest in the Early Reading Intervention Program that was published by Pearson/Scott Foresman in 2002.

Ms. WOOLSEY. And how far did that get in the process?

Mr. KAME'ENUI. Well, there were two different processes. There are curriculum programs that are designed for children K through 6, and there is another process that reviews programs that are called intervention or supplemental programs that try to target a particular skill. So the Early Reading Intervention Program is designed for struggling readers at kindergarten.

Ms. WOOLSEY. And they were accepted or you recommended them?

Mr. KAME'ENUI. It was reviewed. Again, I think the Oregon curriculum review was conducted in a way that would meet the appropriate standards for conflict of interest. They were reviewed independently by two to three different independent reviewers, and then the results were made public.

Ms. WOOLSEY. And they were aware that it was one of your programs, that you had a part of that?

Chairman MILLER. Would the gentlewoman yield?

Ms. WOOLSEY. Yes, sir.

Chairman MILLER. Early Reading Intervention.

Mr. KAME'ENUI. Yes.

Chairman MILLER. You received revenues from that?

Mr. KAME'ENUI. I did.

Chairman MILLER. So you get royalties from that?

Mr. KAME'ENUI. I do, yes.

Chairman MILLER. And that is the program you developed with Ms. Simmons?

Mr. KAME'ENUI. That is right.

Chairman MILLER. Okay.

Ms. WOOLSEY. All right. Thank you. I have obviously missed the big piece of what has been going on while I was on the floor earlier. I am sorry.

All right. Then I am going to change and ask Ms. Lewis a question. And I think you were asked this before, but I need to hear it, the name of the program that originally was the Kentucky program. What was that program before?

Ms. LEWIS. It was the Developmental Reading Assessment that we had originally included in our proposal.

Ms. WOOLSEY. So were you given reasons and rationale why it was not considered appropriate instead of DIBELS?

Ms. LEWIS. Our panel summary said that it was not sufficiently scientifically based, reliable and valid, but they did not explain why.

Ms. WOOLSEY. Ever?

Ms. LEWIS. No.

Ms. WOOLSEY. So what happens to that company when they get that kind of an assessment without any explanation?

Ms. LEWIS. I have had no conversation with DRA. I do not know how they responded.

Ms. WOOLSEY. Okay.

Mr. Chairman, I yield back.

Chairman MILLER. Thank you.

Susan Davis?

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman.

Thank you all for being here.

I wanted to go back, I guess, to Dr. Good. Did you have any role in the criteria that was developed to try and establish which programs were used? I was interested in the fact that you did not call out a number of programs in, I guess, what I would call an RFP of sorts for state education agencies.

But I am trying to understand who actually played a role in putting that criteria together. Were you on the commission at that time, and did the commission actually play a role in that?

Mr. GOOD. I was on the assessment committee, and we played a role in describing the criteria that we would an assessment to meet to be considered as scientifically based reading research supported assessment.

Mrs. DAVIS OF CALIFORNIA. Was DIBELS fully developed at that time? Were you aware that they would meet the criteria, or did you know that if you established that criteria and then set out to be certain that it met that criteria that there would be some relationship there?

Mr. GOOD. DIBELS 5th edition was available at that time. The criteria were really very standard criteria that are publicly available to evaluate assessments—reliability, decision utility, validity of the assessment—and we created a coding form to do that.

Mrs. DAVIS OF CALIFORNIA. If I could, I am sorry, I just wanted to just turn to Ms. Lewis.

Were you under the understanding that, in fact, a Kentucky program answered that criteria and did it have an evaluation K through 3?

Ms. LEWIS. Yes. In our opinion and application of the criteria, we felt that the assessment we selected met the established criteria.

Mrs. DAVIS OF CALIFORNIA. And I have no knowledge or whether or not it would have or not. I am just trying to understand how that chain of assumptions, if you will, or involvement was.

When you were working with this criteria, did you have any knowledge of any other companies that would be putting forth proposals and what their basic fundamentals were specific to this kind of a program? Did you have any knowledge of any other programs around the country at that time?

Mr. GOOD. I would have a general knowledge of assessments that are available, but not specific knowledge of their intent or what proposal they would put forward. These are general criteria that any assessment should meet.

Mrs. DAVIS OF CALIFORNIA. Were any of the individuals from the company that Kentucky had worked with on the panels in any way?

Mr. GOOD. Not that I know of.

Mrs. DAVIS OF CALIFORNIA. Mr. Doherty, I am trying to understand. In some ways, I think part of what we are confused with is

why an individual—and it just happens to be you, Dr. Good. It could have been somebody else, I guess—would have been instrumental in developing the criteria and also instrumental in working with the company that seemed to have answered that criteria so well. Do you know why you were asked to be on the commission?

Mr. GOOD. I believe I was asked to be on that commission because of my expertise in reading and reading assessment. The most important work that I have done is not actually DIBELS. It is a decision model for how to use assessment generally to change outcomes for children.

Mrs. DAVIS OF CALIFORNIA. Are you planning to take that into Spanish language?

Mr. GOOD. Yes, we have a Spanish version that is a reinvention of DIBELS in Spanish.

Mrs. DAVIS OF CALIFORNIA. Thank you very much. I appreciate it.

Mr. GOOD. You are welcome.

Mrs. DAVIS OF CALIFORNIA. Mr. Doherty, how is it that Dr. Good became a commissioner?

Mr. DOHERTY. First, I agree with Dr. Good's general answer that due to his expertise in reading and reading assessment, that is what led to his being asked to be on the assessment committee, although, as Dr. Kame'enui pointed out, that committee was started on or about August of 2001. I joined the department in January of 2002, so I do not know the specifics other than the people on the panel had the requisite research and experience background.

Mrs. DAVIS OF CALIFORNIA. I guess to Dr. Kame'enui, did you ever ask about the ethical concerns or the conflicts of interest? Did you inquire about that and to whom did you inquire?

Mr. KAME'ENUI. Not only did I ask about it, we established conflict of interest procedures, and we put them in place to ensure that members of the committee who had proprietary interest in an instrument would not review their own instrument. We did not receive any guidance, explicit or implicit guidance, from the Department of Education on how to go about on that conflict of interest. So we put in place our own.

Mrs. DAVIS OF CALIFORNIA. Dr. Good, as well, did you make inquiries about conflicts of interest? You had mentioned earlier that it just seemed kind of nebulous to you a little bit.

Mr. GOOD. In my participation on the assessment committee, one of the very first things that I did was acknowledge my role and involvement in DIBELS, although DIBELS at that time was not published and was not generating any revenue at that time.

But I was very public and said, "Is that going to be a concern?" and we talked about what procedures would be in place, notably that I would not be involved in any discussion of DIBELS or participate in any way in the review of DIBELS.

Mrs. DAVIS OF CALIFORNIA. Thank you.

But you did participate in reviews of other programs?

Mr. GOOD. Yes, I did participate in reviews of other programs.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Thank you, Mr. Chairman.

Chairman MILLER. Mr. Tierney?

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Chairman, I am going to use my time probably more for a statement than for questions. But I want to just sort of recap some of the reasons why I think people are concerned starting with where Ms. Davis left off with the conflict of interest.

Mr. Doherty, you had specific recommendations from your ethics counsel to what questions to use with respect to ethics, and you left out just one of those questions, the one question you left off was "Are you aware of any other circumstances that might cause someone to question your impartiality in serving as a reviewer for this competition?" That was designed to exclude individuals who had financial connections to products or programs, and you left that out, the only one you left out.

You also did not bother to look at any resumes. The inspector general went through and said, you know, of over 25 resumes he looked through, six of them identified significant professional connections. We are concerned because that just seems a little too convenient.

We are concerned that the department did not select the expert review panel in compliance with the requirements of No Child Left Behind because, as the inspector general says, probably then none of the applications that were approved are in compliance with the law. That should concern you also, although apparently it does not.

We are concerned that the peer review process was not followed. The local state education groups were not given an opportunity to address issues and concerns by the expert panel reviewers. In fact, you then substituted your report without even telling them that you had done that. That should be of concern for you. Apparently, it is not.

We are concerned that you set conditions that were not included in the statute. In fact, it seems that very little was taken from the statutes in some of those situations, and in your own language, some of it was extralegal. That is of concern and should be of concern to you.

We are concerned that in implementing the program, you obscured the statutory process on that and the requirements. In fact, we are also concerned that after people had been approved—and this directly affects Massachusetts—you then meddled into it—or intervened, in the words of the inspector general—and tried to unwind some of the programs.

In Massachusetts, you went in and you made a call after the process had been approved. I am going to go right to the page on that for you. I think it is page 25 if you want to see the inspector's report. "In Massachusetts, the Reading First director"—that would be you—"raised questions about the SBRR qualifications of programs in four districts." This is after the application had already been approved and they had been allowed to develop their own guide by the LEAs.

This concern was raised in that situation, and the districts were using Wright Group, Rigby, Literacy Collaborative and Harcourt Collections, and basically, only the group that was using Wright Group elected not to change their program, and that is the one whose funding you stopped. That should be of concern to everybody here.

Clearly, you had an agenda. The agenda is phonics, the agenda may be some people that you were associated with, and it goes right down the line. What is the difference, Mr. Doherty, between Wright Group—what is the one thing that differentiates that—from the other programs that you accepted? One was phonics, and one was whole language, correct?

Mr. DOHERTY. Our agenda was the scientifically based reading research.

Mr. TIERNEY. Yes, right. Now, just to interrupt for a second, because my time is limited, the difference between Wright and the others was that Wright was a whole language and the others were phonics, correct?

Mr. DOHERTY. One aligned with the statute and one, apparently, did not.

Mr. TIERNEY. I mean, you are a big educator, so I assume you understand English. One was phonics, and one was whole language. Am I correct?

Mr. DOHERTY. To say that a program is phonics, the law requires five components of——

Mr. TIERNEY. All right. Never mind. Thank you, Mr. Doherty. I think we understand where you are from.

Let me just read some statements and close out on this, Mr. Chairman, if I might, about why we are concerned here.

And you folks can stop me at any point of time you think that this is inaccurate on that.

When the department needed reviewers to evaluate reading assessment programs, they contacted the University of Oregon team that was led by Edward Kame'enui, Roland Good and Deborah Simmons. Mr. Good had developed an assessment called DIBELS, and Mr. Kame'enui, Good and Simmons had all served on the design team for Voyager Passport, which is a remedial program built around DIBELS. Ultimately, DIBELS was the only assessment used in Reading First, and Voyager was the most popular supplemental program.

Then the department steered states to just three providers of professional development services—Kame'enui and Simmons of Oregon, Ms. Moats, and a Sharon Vaughn of the University of Texas. Ms. Vaughn, of course, was the other member of the Voyager Passport design team and one of four chairmen of the secretary's Reading Literature Academy. That exerted a tremendous influence over Reading First, but the other chairmen were Moats, Kame'enui and his Oregon colleague, Mr. Carnine.

Mr. Kame'enui and Simmons also wrote the Consumer's Guide that most states use and agree to use to evaluate the Reading First Programs and ran one of Reading First's three technical assistance centers in Oregon. Mr. Simmons and Kame'enui co-wrote another book, and Mr. Kame'enui earned more than $100,000 last year for royalties of another, according to his own financial disclosure statement.

You can see the pattern here, Mr. Doherty, about what is going on.

I will just close out with Elaine Garan who wrote a book in 2004 entitled "In Defense of Our Children: When Politics, Profit and Education Collide" She recalled that when she was writing a book,

she color coded the various financial connections that were running through Reading First. She said, "When it came to Mr. Kame'enui, I ran out of colors."

I think we ran out of colors on a lot of these connections, and we ran out of colors to figure out how many ways you tried to interfere with the absolute implementation of that statute as it was written.

I yield back, Mr. Chairman.

Mr. CASTLE. Thank you, Mr. Chairman. I will yield my time to the distinguished ranking Republican, Mr. McKeon.

Mr. MCKEON. Thank you, Mr. Chairman.

Thank you, Mr. Castle.

Mr. Doherty, another state that has gotten attention that we have not talked about here today is Nevada. The inspector general's report stated that although the panel chair summary for the Nevada's application referred them to A Consumer's Guide to Evaluate a Core Reading Program, the expert review team report that you prepared omitted these comments. Why was that?

Mr. DOHERTY. If any comments that the state needed to hear from the expert review panel summary were omitted, it was by mistake an omission. We produced those summary reports in an effort to be helpful and focused for the states. In no way did we attempt to change the substance of what the expert review panel members were saying. We genuinely thought and we are aware of no prohibition against making a summary report.

I cannot say that every single report—and there were probably a couple of hundred—did not omit something by mistake, but we tried extremely hard to streamline and standardize the kinds of feedback that a state would receive pegged directly to the criteria of the application. As far as a particular omission in Nevada's report, I am unaware of that right now.

Mr. MCKEON. You know, given the benefit of hindsight, should you have been given better and more support from the Office of Elementary and Secondary Education and the Office of the General Counsel, especially when it came to examining possible conflicts of interest and establishing the peer review panels?

Mr. DOHERTY. I think it is safe to say that we all agree that, given what we know now, we would have different procedures. At the same time, at the time, we were all on the same page—the Office of General Counsel, the Office of Elementary and Secondary Ed, the Office of the Secretary. We worked together as a team, and we were on the same page.

I cannot imagine that any members of those groups would disagree with the suggestion that when people do it again that they take the learning from this process and make sure that such a large and regrettable distraction from the program does not happen again.

Mr. MCKEON. Thank you.

Dr. Kame'enui, do you have any response to the previous questions?

Mr. KAME'ENUI. I appreciate the premise that in hindsight we would do things differently. We absolutely would do things differently.

I think I would recommend, as others have noted, an independent panel where there is no proprietary interest from any member of that panel to review, vet curriculum materials, assessment materials and so on. I think that would be wise.

At the same time, I think it is important to appreciate the context in which the Reading First assessment committee did its work. It was very early on. We were asked to do it in 4 months. We delivered in 8 months a product that I am still proud of, and had we been informed of conflict of interest criteria, we would have certainly implemented those and followed those by the book.

We created our own that I thought and I still do think that it meets the academic standards that are in place today, and I regret the perception of conflict of interest, but there was no, as I noted in my testimony and wrote, real conflict of interest that we engaged in at any time, either in the review of the Reading First assessment materials or the review of the curriculum materials that we conducted.

Mr. MCKEON. Thank you.

And another one for Mr. Doherty, if you read all of the various reports, your head starts to spin after a while if you try to determine exactly what the reaction to Reading First has been in states and local school districts.

On the one hand, we have the inspector general's report that clearly indicates that some states felt like they were unfairly pushed toward certain programs, Kentucky being one of these. The GAO report backs up that claim.

On the other hand, we have the Center on Education Policies' 2006 report and that same GAO report stating that most folks are happy with the way the Reading First Program has been implemented and feel like it is having a good impact.

When you left the department, what was your overall impression of how states were reacting to Reading First and has that impression changed as a result of the inspector general's reports?

Mr. DOHERTY. I think it is hard to overstate the contrast between the controversy about Reading First here in Washington and the appreciation and support of Reading First in the vast majority of states across the country.

Reading First was and will probably remain the highlight of my professional career. The respect and affection that I have for the state directors and the people who work in the districts is something that I cannot express.

I think that the net effect of these six reports is to have mined thousands and thousands of e-mails and documents and come up with a very unrepresentative picture of a program that is very successful. I know that some state directors wanted to testify at this hearing today and offer a more positive opinion, and they were told that the panel is not interested in positive information about Reading First.

I think the Reading First Program is successful because of the good law that was implemented faithfully by people who love the program. I do think that across the nation, Reading First is widely embraced, and I sincerely hope that it will only continue to improve in coming years.

Mr. MCKEON. Thank you.

Chairman MILLER. I appreciate your side, Mr. Doherty, except the problem is you are looking at a panel here that supports Reading First. That is why we are concerned about the integrity in the program from one end of this panel to the other, one of the authors. That is why we are concerned.

Mr. Sarbanes?

Mr. SARBANES. Thank you, Mr. Chairman, for conducting the hearing and bringing scrutiny to this issue.

The stakes are very high on this stuff, and there are many reasons. There are two in particular I would cite. The first is, as we have heard a little bit about already, there are these reading wars that have been going on for some time, and there are true believers in these wars, and they can be overzealous when it comes time to implement these programs. For that reason, it is incredibly important that whatever the review process is that is in place be balanced and neutral.

The second reason the stakes are so high is that every school system in this country and just about every instructional professional is focused like a laser on the need to increase proficiency in math and reading by the year 2013, 2014, and everybody is under a lot of pressure to achieve that, and so when you get to the question of scientifically based research and what it supports in terms of reading programs, it is hard to overstate how important it is to be balanced and fair.

I am concerned and alarmed at evidence of tipping the scales that we have heard today. It particularly offends me, the appearance that that occurred, vis-a-vis the state department of education in Maryland, as we heard Mr. Hare, I think, refer to.

The potential for this to interfere with professional judgment that people are trying to exercise reminds me a little bit, particularly because we are talking about scientifically based research, of a hearing, Mr. Chairman, we had in the Oversight and Government Committee on the administration's interference with the science on global warming. I mean, it seems to reflect a pattern and an impulse.

Mr. Doherty, I guess what disappoints me is given your relationship to Direct Instruction, I would have thought you would have gone out of your way to ensure that the review process and the composition of these panels and so forth was done in a way that would make it absolutely clear that it was balanced and that there was no bias, and I wonder if you could just, looking back, tell me if you think you could have done a lot more to ensure that in the process.

Mr. DOHERTY. Yes, I think that we could have done more to ensure that. I do want to point out that we did screen, and the screening that we did for Direct Instruction was consistent with the screening that was one at the department at the time, and none of those individuals that are cited had or have direct financial connections to the Direct Instruction program.

These were people who had implemented the program, principals of schools who had used the program, but none of those properly screened people had direct financial involvement with Direct Instruction or, to my knowledge, have since joined in any financial way with Direct Instruction. But I absolutely agree that this whole

day is evidence of how much better we could have done to have avoided the perception of conflicts of interest.

Mr. SARBANES. See, the financial interest is just one aspect of the conflict of interest that, I think, we have touched on here. The other is just, as I say, this notion of true believers on these things that are very, very important. So I am as concerned about that aspect of it because we are talking about what are the best practices to ensure that children will learn and learn to read and do it under this timeline for proficiency expectations that has been imposed by No Child Left Behind.

I am sorry that Ms. Lewis is not at the table any longer. I was going to ask her to reflect or to discuss or describe what she thinks the impact is on morale in the field when people work their best to exercise professional judgment to determine what the best kinds of programs are, make good faith presentations of that to their superiors and those who are in a position to exercise a lot of influence and then feel like the scales are being tipped and like there is an imbalance, and I certainly regret the impact that that must have had on people in the field.

Thank you, Mr. Chairman.

Mr. HINOJOSA. Thank you, Mr. Chairman.

My first question is directed to Dr. Roland Good. Since DIBELS is offered in Spanish, which you answered the question from Congresswoman Susan Davis, do you have plans to offer it to other countries, to offer it for sale to other countries?

Mr. GOOD. Currently, the Spanish version of DIBELS—it is called IDEL—is really designed for use in the U.S. for English language learners or for children who are learning to read in Spanish in the U.S. I think it would be something that would be valuable in other Spanish-speaking countries for children learning to read in Spanish. However, we would have to do that research in that context first before we felt comfortable offering that in other settings.

Mr. HINOJOSA. Will the DIBELS data system ever leave the University of Oregon and become part of your company, DMG?

Mr. GOOD. I do not see a viable way in which DIBELS data system would leave the University of Oregon.

Mr. HINOJOSA. What does it cost to become a DIBELS-certified trainer?

Mr. GOOD. We would ask DIBELS-certified trainers to attend our DIBELS trainers' institute. I think the fee for that institute is $900, and it is a 4-day trainers' institute.

Mr. HINOJOSA. Are you seeing a lot of people taking that up and going for the training?

Mr. GOOD. Not very many. Instead what we see is most DIBELS trainers have not attended that institute. May I elaborate just a minute?

Mr. HINOJOSA. Yes.

Mr. GOOD. There is a very large number of people who are DIBELS trainers. Only a very small number of DIBELS trainers have any financial relationship with Dynamic Measurement Group or with DIBELS. Most of the DIBELS trainers are reading experts who have developed that expertise in DIBELS training, and they provide that through their own system.

Mr. HINOJOSA. In your testimony, you seem to always lead us to believe that you are not making money from all of this that we have discussed that you have created. Please tell me when was DIBELS made available for sale?

Mr. GOOD. Our first royalties from DIBELS were in 2003.

Mr. HINOJOSA. Was your compensation at the University of Oregon based on revenues generated by DIBELS?

Mr. GOOD. No.

Mr. HINOJOSA. Not at all?

Mr. GOOD. No.

Mr. HINOJOSA. My question to Jack Higgins, where does the OIG go from here after today's hearing?

Mr. HIGGINS. Well, the first thing we will be doing is following up on the recommendations that we made to the department to see if they do them, which we believe they are doing, and look at the effectiveness of the way they are implementing the recommendations. There are a few things that came up here today that we are going to follow up with, and if you have any suggestions for areas that you think we need to look at, we will be more than glad to hear what they are.

Mr. HINOJOSA. Well, it leads to a lot of concerns, and this has been a very interesting hearing. I have to say that the findings from this hearing need to go out throughout the country because we may be able to get additional information to this committee on facts that would impact the actions that you would have to take.

I am concerned that much of the information that Mr. Doherty gave us leads us to want to search and find out more because it seems that $1 billion worth of federal investment in this program indicates that there could have been people who were benefiting from it being that they did not name all of the panelists that could have and should have been named.

So I am pleased to have been able to listen to the testimony and to the many questions that were asked by my colleagues here as members of Congress.

With that, Mr. Chairman, I yield back.

Chairman MILLER. Mr. Good, I had asked you about how much money your company had made.

Mr. GOOD. Yes. Prior to 2003, there was no company and no revenue generated. From 2003——

Chairman MILLER. There would not be any money going to the company if there was no company and no revenue. Okay.

Mr. GOOD. From 2003 through 2006, we have received royalty payments in the amount of about $1,291,333.79.

Chairman MILLER. And you are a 50 percent shareholder.

Mr. GOOD. I am a 50 percent shareholder. May I elaborate?

Chairman MILLER. Yes.

Mr. GOOD. Through 2005, we made contributions to the University of Oregon foundation to support——

Chairman MILLER. Mr. Good, I appreciate that.

How long do these royalties continue?

Mr. GOOD. Pardon?

Chairman MILLER. How long will these royalties continue?

Mr. GOOD. These royalties will continue while DIBELS is a published measure.

Chairman MILLER. This company receives royalties off of the handheld?

Mr. GOOD. We have an alliance agreement with Wireless Generation that we——

Chairman MILLER. So you get royalties off of that. You get 40 percent of each student that is tested off the handheld. Is that correct.

Mr. GOOD. Forty cents for each student.

Chairman MILLER. That is one student per annum?

Mr. GOOD. Pardon?

Chairman MILLER. One student per year?

Mr. GOOD. Yes.

Chairman MILLER. Okay. And you expect that to continue? I mean, that is not a time-limited royalty agreement?

Mr. GOOD. I think it is time limited for a few more years.

Chairman MILLER. But you own the intellectual property, or would that be the end of it? Could they go ahead without you?

Mr. GOOD. I do not think so. It would have to be——

Chairman MILLER. I bet they do not.

Mr. Good, is it correct that you and Mr. Kame'enui and Ms. Simmons co-authored this 29-page article that was put into these—Mr. Higgins, what were they called?

Mr. HIGGINS. Handbook and the guide.

Chairman MILLER. The handbook and the guide.

Mr. GOOD. Yes.

Chairman MILLER. So who put them in the handbook and the guide?

Mr. GOOD. I do not know.

Chairman MILLER. Ms. Simmons?

Ms. SIMMONS. I do not know.

Chairman MILLER. I am sorry?

Ms. SIMMONS. I am sorry, sir. This is the first time I was made aware that that article was in the guide, was in the handbook.

Chairman MILLER. Is that right?

Ms. SIMMONS. Is it a DIBELS assessment?

Chairman MILLER. It is an article that you authored.

Ms. SIMMONS. I have written articles with Dr. Good for sure, but I was not aware that it was in the handbook.

Chairman MILLER. Dr. Kame'enui?

Mr. KAME'ENUI. I was not involved in the preparation of the handbook or the selection of the materials or the inclusion of materials, if it is the handbook that you are referring to as the guidance.

Chairman MILLER. Mr. Doherty?

Mr. DOHERTY. If you are referring to the binder that went out during the secretary's——

Chairman MILLER. I am referring to the handbook and the guide that is referenced in the inspector general's report. It had a 29-page article in it on DIBELS.

Mr. DOHERTY. Right. My understanding is that is the materials that were handed out at the secretary's Reading Leadership Academies. Those materials were put together in the second half of 2001 prior to my joining the department. To the extent that it was a NIFL contract, perhaps it was NIFL.

Chairman MILLER. Mr. Higgins, do you know?

Mr. HIGGINS. No, I do not know. But I know the document says, yes, Department of Education on the back of it. So somebody at the department had to approve it being put in there.

Chairman MILLER. Mr. Kame'enui, I asked you this earlier, and I think your answer was yes. You are currently receiving royalties from Early Reading Intervention?

Mr. KAME'ENUI. I am.

Chairman MILLER. According to the publisher, that is packaged with DIBELS.

Mr. KAME'ENUI. At the time that I signed my royalty agreement, I did not know that that could be a marketing extension at this point in time, but, as I noted, I have been away from working with Pearson/Scott Foresman for 2 years. That could be, but I have no knowledge of that, sir.

Chairman MILLER. And, Ms. Simmons, you are receiving royalties for Early Reading Intervention?

Ms. SIMMONS. I do, sir, but——

Chairman MILLER. So, at the time you were serving on these panels, you were negotiating with people who had a Reading First product?

Ms. SIMMONS. May I clarify, sir? The Early Reading Assessment Intervention does not have a DIBELS component to it.

Chairman MILLER. Well, according to the publisher, it does. It is packaged with DIBELS. It is sold as a package with DIBELS.

Ms. SIMMONS. I was not aware of that.

Chairman MILLER. Were you aware that you were negotiating with Scott Foresman during the time you were on the panel?

Ms. SIMMONS. On the assessment panel, sir?

Chairman MILLER. Yes.

Ms. SIMMONS. Yes. I was negotiating with Scott Foresman about a reading program, but not an assessment component.

Chairman MILLER. You were negotiating with Scott Foresman about a Reading First product. Is that correct?

Ms. SIMMONS. About a reading program that is used in Reading First.

Chairman MILLER. In Reading First, yes. And you have received what in royalties for that so far?

Ms. SIMMONS. I cannot give you specific figures, but I could give you estimates of what those are.

Chairman MILLER. Why don't you go ahead and do that?

Ms. SIMMONS. Last year, it was about $150,000.

Chairman MILLER. Mr. Kame'enui, is that consistent with your royalties you have received from that product?

Mr. KAME'ENUI. Yes, yes.

Chairman MILLER. So let me see. That was in 2002. So you have received royalties for 3 years?

Ms. SIMMONS. About 3 years. Yes, sir.

Chairman MILLER. So about the same amount?

Ms. SIMMONS. No, no. They have——

Chairman MILLER. It has grown?

Ms. SIMMONS. It has grown over a period of time.

Chairman MILLER. Same situation with you, Mr. Kame'enui?

Mr. KAME'ENUI. Yes.

Chairman MILLER. Is that consistent, Mr. Higgins, with what you know?

Mr. HIGGINS. We did not look into the financial aspects.

Chairman MILLER. You did not look into the royalties.

So nobody knows how this DIBELS article, the only article on an assessment tool, got into the official documents that were given to states and others to look and decide on how to make these decisions?

Mr. Rasa, do you know?

Mr. RASA. No, I do not.

Chairman MILLER. See, I hoped he brought you along so you could tell us. [Laughter.]

There you are.

Mr. RASA. I do know that 29 pages are in the——

Chairman MILLER. I am sorry. You need your microphone.

Mr. RASA. I do know that the 29-page article is in both documents, and it covers DIBELS.

Chairman MILLER. Okay. Thank you.

Mr. McKeon?

Mr. MCKEON. Thank you, Mr. Chairman.

Are we wrapping up now?

Chairman MILLER. Yes. Go ahead.

Mr. MCKEON. This has been very, very interesting to me. I have been here in Congress now for about 15 years, and we have passed legislation during that time that has started some new programs.

One of them that kind of sticks out in my mind in my first term was AmeriCorps, and I opposed the program, but it was passed. It was started, and it was funded at less than half of the level of the program that we are talking about.

I remember after a few years, we had a hearing. I remember we had the director of the program here, and at the time, we had tried to do an audit and they could not even tell us were the money was. They could not tell us how much money they had, they could not tell us how it was spent, and we could not get any kind of substantive idea of how the program was working.

I think it has improved now, I think, considerably.

Chairman MILLER. I hope.

Mr. MCKEON. Yes. I am still not real excited about it.

But the point is I have thought about this, you know, during our question-and-answer period and then while we were over voting. I have thought about this quite a bit. It seems to me you start a new program—and $1 billion is a lot of money—and you say, "Here. You are going to be responsible for this, and we want you to spend $1 billion this year and $1 billion next year and $1 billion the next year, and we want you to use that money to help the young children who really need the help to learn to read."

I think we have pointed out flaws in the implementation and how it has been done and maybe some people have made some money off of it—you know, people make money a lot of different ways, for a lot of different reasons—and I guess we can look at things as the glass is half empty or half full, and we can question people's motives. There are all kinds of things, but I think the bottom line, as I have seen it today, is the program has been very beneficial for a lot of young people, and it has worked very well.

Let me just cite a couple of statistics.

In Reading First schools, the percentage of first graders meeting or exceeding proficiency on Reading First fluency outcome measures increased by 14 percentage points, from 43 to 57 percent, from 2004 to 2006.

In Reading First schools, the percentage of third graders meeting or exceeding proficiency on Reading First fluency increased by 7 percentage points, from 36 to 43 percent, during the same period of time.

On average, the 16 states with baseline data increased the percentage of students meeting or exceeding proficiency on fluency outcome measures by 16 percent for first graders, 14 percent for second graders and 15 percent for third graders.

Looking at these statistics, it seems to me that, as I said, the program has benefited a lot of young people. I think it has been a very good program, and I hope with all of this discussion there is no detraction from the program and that we can take what we have seen here today—I think everybody agrees that some things could have been done differently, and the bill that I introduced yesterday will address most of those issues as have been brought out by the inspector general's report—and, hopefully, we will learn from this. We will take those things, incorporate them into the law and move to make the program better.

I still feel when you introduce a program at the federal level and you have to come up with spending a lot of money in a very short period of time and put together all of the different components of that that all of you who have been involved in this to look at these kind of results must feel pretty good about that.

I know there has been some discussion about agendas, phonics versus whole language. I was on a school board for 9 years before I came to Congress, and I was involved in some of those fights, and I know there was a period of time where reading really declined. Then there was this fight in our state about phonics versus whole language, and phonics was brought back into the process and reading did improve.

I no way profess to be any kind of an expert in any of this, but I just hope that you can feel that you have been part of a good process, that it has done a lot of good for a lot of young people, that we can take what we have learned here today and make the law better as we go forward in the reauthorization process.

And I want to thank you for your service. You know, I have been here now almost 15 years, and I see a lot of people in this town get crucified, and I am just really getting sick of it. So thank you for what you have done—all of you—and I hope, as I said, that we make this a positive experience.

Chairman MILLER. I thank the gentleman, and I thank him for his participation and again for his suggestions that we will work with him for changes in this program as a result of the IG's report.

I am a little concerned. You talked about people getting crucified. I am a little concerned—more than a little concerned—about the evidence that has been presented to us in the inspector general's report, and I am a little concerned that Mr. Doherty, in my opinion—that is my opinion—finds the law something to be worked

around rather than worked with, except in the case of where we saw one e-mail where he used it to his or his friends' advantage.

The answer to violating the law is not that people are happy with you. That is not a justification in the law. If e-mail will tell you what a wonderful person you are, it is of little value compared to the law. You know, a lot of people go to a pizza parlor and they love the pizza, and it is produced by a criminal enterprise. It does not tell you anything about the enterprise. It tells you they love the pizza.

We agree. We are fans of the program. But this implementation is very worrisome because I think you are very close to a criminal enterprise here.

Have you made any criminal referrals, Mr. Higgins?

Microphone. I cannot hear you. You have to do two things. You have to pull it closer, and then you have to turn it on.

Thank you.

Mr. HIGGINS. I am a slow learner.

We have made referrals to the Department of Justice, and we are pursuing them.

Chairman MILLER. Well, I have to tell you that that just does not surprise me at all because I think that this process was cooked from the very beginning.

Mr. Good, I know you are proud to be on the assessments committee, and I know you were picked for your expertise, but the report you produced the assistant secretary thought about junking it. You could not find an official sponsor for it. The e-mails are going back and forth about how you are going to represent this and how you are going to respond if somebody asks you questions, has it been reviewed and is it ready yet and all of these things.

And finally it ends up posted out on the Web site at the University of Hawaii on the assessments, right, Mr. Kame'enui—Oregon. Excuse me. Oregon. Hawaiian name, Oregon resident.

So, apparently, it was not quite the crystal clear work in a lot of people's minds, but there was enough subterfuge—and it is outlined very clearly, if you want to read the trail, in the inspector general's report, the process that was used—to get it up and get it running, and it carries, again, conflicted recommendations because of the people's financial interests and personal interests and intellectual interests in the assessments that they were reviewing.

On the expert review panels, the inspector general makes it very clear, that Congress was very clear about the kind of participation they expected and the impartiality that they expected. That was completely overridden, and even when it was brought to your attention, Mr. Doherty, and you somehow figured to set up your independent review of that which never came into place, it went forward. So then we had conflicted review panels.

When it was suggested to you that there was an ethical problem, you did not take the advice of the general counsel's office. You went your own way. So you did not ask people that question that would have revealed. You did not look at their resumes to see whether or not you had conflicted individuals on these panels that were making determinations about other people's intellectual property, about other people's work, about determinations by school districts and others about those products. You chose to violate the law.

You do not get to do that in this country because people rely on the law. School districts rely on the law. Families rely on the law. That is what people do, and you do not get to override that, but the fact of the matter is that you did.

Then when the guidance was produced, the guidance, as we now see, was a front. It was a front for your little inside game. If you went to the guidance, it looked like it was on the level. If you went the other way, what you saw is that districts and individuals were being bashed off the record. Over and over and over again, they were being bullied. They were being bullied until they came into compliance with your vision of what Reading First should be.

You know, we were very particular when we wrote this law because we understood the history of what somebody referred to as the reading wars. You were on the school board at about the time it almost engulfed our entire state. So we knew what was at stake. That is why we asked for that kind of broad participating and impartiality. That is why the law was there, for that exact reason, so zealots would not run off with this and destroy the program. That is why the law was there.

I think you have to understand that, that we did not see that the academies were interested parties, were going out with guidebooks from the official government that carried one puff piece in it—one puff piece—authored by three people sitting at this table, three people who are getting royalties from some part of that work, three people who will continue to get royalties because some of this is in as many as 40 states. That sounds like a criminal enterprise to me. That sounds like an inside job.

Fortunately, I think maybe Reading First has survived that, but, again, that is not the test. That is not the test for this committee. It is not the test for the IG. It is not the test for the department. The question is whether or not this program has been operated within the law. The IG suggested it has not been and strongly suggested it has not been. I think that when we put this evidence together, we may join you in those criminal referrals because something is very wrong here.

Something is very, very wrong when a small group of people can direct and engage in the activities that were engaged here on behalf of a few programs and browbeat states and browbeat educational officers in those states and even go in after plans were approved and get people to give up programs or to change all in the name of some kind of intellectual adherence to the scientifically based reading programs, that that was the test that would be used.

Yet we see even those who complied, if they were not part of the party, actions were taken against them, and then we see those who were excluded are now in The What Works list. Something is very wrong here.

As to the suggestion that somehow this was all evidence driven, that this was all scientifically studied and that was the only concern, I have to think the IG has given us a record that suggests very strongly that pocketbooks and self-interests and future interests overwhelm the idea that this was to be somehow just scientifically based.

You know, we took a lot of ridicule from people because we put that term in the law so many times because, you now, we knew

what we were doing in changing the direction, we knew it was without controversy, and then we come along and see the very adherents of this program—from Mr. Lyons on down and tragically, I think, up into the department—we see the very adherents of that effort, that change, that, "reform" in your mind that somehow took it and prostituted it in its implementation beyond all recognition.

Yes, the outcomes apparently are going to be okay, but I dare say this is not how in the land of laws you get to that result, and, I cannot tell you how dismaying this is. This was a huge decision by the Congress to dedicate this level of resources for this particular purpose, essentially a $1 billion rifle shot year after year, trying to meet the desires and the hopes of this nation that our children would reach reading proficiency at an early age, and to see that program scrambled in the manner in which you have done here is just unbelievable.

I want to thank all of the members of the committee for their participation. It has been a long day.

I want to thank Mr. McKeon and his staff for their help during the preparation for this hearing, and as I said earlier, I look forward to working with you on the changes that need to be made in the law.

Thank you to all of the witnesses for appearing.

Members will have 14 days to insert comments into the hearing record, and with that, the committee will stand adjourned.

Thank you.

[The prepared statement of Mr. Altmire follows:]

Prepared Statement of Hon. Jason Altmire, a Representative in Congress From the State of Pennsylvania

Thank you, Mr. Chairman, for having this important hearing on the mismanagement of and potential conflicts of interest in the Reading First program.

As members of the committee know, Reading First is a $1 billion a year program designed to ensure that all students are able to read at grade level by the end of third grade. Unfortunately, funds from the program were not used in an entirely appropriate manner and I am deeply concerned about how this mismanagement came about.

A large part of the problem stems from a lack of Congressional oversight from this committee over the past six years. Without review, Reading First was mismanaged for much longer than would have been allowed to had appropriate Congressional oversight been occurring. That is why I am pleased with Chairman Miller's leadership and applaud him for making oversight of programs in the Department of Education a priority of this committee. By doing so, he has brought the issues of Reading First to light.

Thank you again, Mr. Chairman, for your leadership on this issue. I yield back the balance of my time.

[Responses from Mr. Higgins to questions posed by Mr. Miller follow:]

OFFICE OF THE INSPECTOR GENERAL,
U.S. DEPARTMENT OF EDUCATION,
Washington, DC.

Hon. GEORGE MILLER, *Chairman,*
Education and Labor Committee, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: Thank you and your colleagues on the Committee on Education and Labor for inviting me to participate in the April hearing on the Reading First program. I appreciated the opportunity to discuss the work my office has conducted in this area. Below you will find my office's responses to the questions posed by Committee members in response to my testimony and that of the other

hearing participants. Please know that my staff and I are available if you have any additional questions, or require more information.

(1) Should more than four groups be involved in the expert review panel?

We believe that identifying more groups to be involved in the expert review panel would improve the process, because it would provide a broader base from which to select panel members without affiliations or connections to the matters that would come before them. It is also critical that the U.S. Department of Education (Department) abide by the law's requirement to involve identified groups in the process.

(2) Does the statute require more stringent language regarding conflict of interest?

We believe the conflict of interest language proposed in HR 1939 adequately addresses the screening concern; however, it does not adequately provide an approach for resolving identified conflicts of interest for staff and contractors.

(3) Who in the Department approved the final printing of the guidebook/handbook?

We reviewed our records, inquired with the contractor and the Department and found that Susan Neuman, in her capacity as the Assistant Secretary of the Office of Elementary and Secondary Education (OESE), oversaw the review and approval process for the final printing of the handbook and guidebook. Further, during the course of our work, we interviewed Ms. Neuman, who indicated that she was the ultimate arbiter for decisions made concerning the presentations at the Reading Leadership Academies, which formed the basis of the materials included in the handbook and guidebook.

(4) Does OIG have any other suggestions for amending the Reading First statute?

In addition to the conflict of interest language proposed in HR 1939, we suggest that the Congress clarify whether individual reading programs need to show scientific evidence of effectiveness in order to be eligible for funding under Reading First.

(5) Mr. Doherty stated in his written statement and in his oral testimony that he was only following the direction of his superiors and that he did nothing without their knowing.

What is the official/unofficial chain of command? Who were Doherty's superiors and what role did they play in directing Doherty?

The chain of command at the time of the Reading Leadership Academies appears to be listed on a page in the back of the Handbook which reads as follows: Secretary Rod Paige; Counsel to the Secretary Susan Schlafani; Senior Advisor to the Secretary Beth Ann Bryan; Special Assistant to the Deputy Secretary Mike Petrilli; Assistant Secretary of OESE Susan Neuman; Acting Deputy Assistant Secretary Joe Conaty; Acting Deputy Assistant Secretary Tom Corwin; Chief of Staff to the Deputy Secretary Carolyn Snowbarger; Special Assistant Kerri Briggs; Reading First Director Chris Doherty; Reading First Senior Program Specialist Sandy Jacobs; and the remaining staff that assisted them. I have attached a copy of the Handbook page for your review.

Subsequent to the Reading Leadership Academies, Susan Neuman resigned from the Department and Mr. Doherty reported to Ray Simon in his capacity as Assistant Secretary of OESE before Mr. Simon became Deputy Secretary. When Ray Simon became Deputy Secretary and Henry Johnson replaced him as Assistant Secretary of OESE, Doherty reported to both Mr. Simon and Mr. Johnson.

As for the role of and direction given to Mr. Doherty by his superiors, this is a question that is more appropriate for the Department to address, as we do not have this information.

(6) Inspector General Higgins mentioned that the OIG made referrals to DOJ. We are aware of the Doherty referral, but request the number and names for other referrals resulting from the OIG's work leading up to the hearing.

As this information is confidential, I can, here, only confirm the statement I made during the testimony that my office has made more than one referral. We have provided more detailed information to Committee staff in a confidential discussion.

Thank you again for convening the hearing on this very important issue.

Sincerely,

JOHN P. HIGGINS, JR.

[Internet address to Department of Education IG report, "The Reading First Program's Grant Application Process, Final Inspection Report" (Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/aireports/i13f0017.doc

[Internet address to Department of Education IG report, "RMC Research Corporation's Administration of the Reading First Program Contracts, Final Audit Report" (Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/auditreports/a03f0022.doc

[Internet address to Department of Education IG report, "The Department's Administration of Selected Aspects of the Reading First Program, Final Audit Report" (Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/auditreports/a03g0006.doc

[Internet address to Department of Education IG report in the form of a letter, dated January 18, 2007, "Review of the Georgia Reading First Program—Final Audit Report" (Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/auditreports/a04g0003.doc

[Internet address to Department of Education IG report, "Audit of New York State Education Department's Reading First Program, Final Audit Report" (EDITOR'S NOTE: *very large* Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/auditreports/a02g0002.doc

[Internet address to Department of Education IG report in the form of a letter, dated October 20, 2006, "Wisconsin Department of Public Instruction's Reading First Program—Final Audit Report" (Microsoft Word document) follows:]

http://www.ed.gov/about/offices/list/oig/auditreports/a05g0011.doc

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[Questions submitted to witnesses by Mr. Scott follow:]

COMMITTEE ON EDUCATION AND LABOR,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, April 30, 2007.

Christopher J. Doherty,
Baltimore, MD.

Deborah C. Simmons,
Department of Educational Psychology, Texas A&M University, College Station, TX.

Edward J. Kame'enui,
Commissioner, National Center for Special Education Research, Washington, DC.

Roland Good,
College of Education, University of Oregon, Eugene, OR.

DEAR MR. DOHERTY, DR. SIMMONS, DR. KAME'ENUI, DR. GOOD: Thank you for testifying at the April 20, 2007 full Committee hearing titled "Mismanagement and Conflicts of Interest in the Reading First Program."

Representative Robert Scott (D-VA), has asked that you respond in writing to the following questions:

1) How much money, directly or indirectly, have you, your employers, your business partners, or your family members received from the DIBELS assessment system, including, but not limited to, the costs of scoring tests and the purchasing of DIBELS-related technology?

2) Are you aware of any political contributions made by you, your employer, your business partners, or your family members since 2001? If so, please list such contributions.

Please send an electronic version of your written response to the question to Sarah Dyson of the Committee staff at sarah.dyson@mail.house.gov, by COB on Friday, May 4—the date on which the hearing record will close. If you have any ques-

tions, please contact Sarah at (202)226-9403. Once again, we greatly appreciated your testimony at this hearing.

Sincerely,

GEORGE MILLER,
Chairman.

[Responses to Mr. Scott's questions from Mr. Doherty follow:]

Responses to Congressman Scott's Questions From Mr. Doherty

Response to Question 1

Neither I nor any family members have received any money, directly or indirectly, from any aspect of the DIBELS assessment system. My employer from 2002-2006 was the Federal government. Neither my employer in 2001 nor my current employer received or currently receive any money from the DIBELS assessment system. I do not have any business partners.

Response to Question 2

To the best of my recollection, I personally have made four political contributions from 2001-2006. They are: two contributions to George W. Bush, for an approximate total of several hundred dollars; one contribution to Connecticut representative Rob Simmons for one hundred dollars; and one contribution to a candidate for the Maryland House of Delegates, Andy Smarick, for fifty dollars.

These figures are to the best of my memory; in order to meet your deadline of Friday, May 4th I am submitting these now but I have not located the exact records to fully corroborate these figures.

No member of my immediate family member has made any political contributions from 2001 to the present. My employer from 2002-2006 was the Federal government. My employer in 2001 made no political contributions. My current employer is a philanthropic foundation and, to the best of my knowledge, does not make and cannot make any political contributions. I have not had any business partners from 2001 to the present.

[Responses to Mr. Scott's questions from Dr. Kame'enui follow:]

May 4, 2007.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: In this letter, I provide my responses in writing to the questions from Representative Robert Scott (D-VA) that you posed in your letter dated April 30, 2007. Each question and my responses are provided below.

Question #1:

1. How much money, directly or indirectly, have you, your employers, your business partners, or your family members received from the DIBELS assessment system, including, but not limited to, the costs of scoring tests and the purchasing of DIBELS related technology?

Response:

Neither I nor any members of my family have received any money, directly or indirectly, from the DIBELS assessment system, including, but not limited to the costs of scoring tests and the purchasing of DIBELS related technology. I do not own a business, and thus, do not have a business partner. If, however, the question relates to individuals with whom I have had scholarly partnerships with, then that would include Deborah Simmons and Roland Good. I do not have any personal knowledge about whether either has received money from the DIBELS assessment system. Because of his role in developing DIBELS, I do know that Dr. Good receives royalties but I do not know the specifics of any such arrangements.

My employer is the University of Oregon (Oregon University System). The University of Oregon (UO) operates a web-based data system designed to analyze the DIBELS assessment data via the internet. School officials (typically teachers) enter the data obtained from the DIBELS assessment battery into a website. Once the data are entered, school officials choose an array of reports that automatically analyzes the DIBELS data for each child and tells school officials who needs reading support and why. The charge for this service is $1.00 per child per year. All revenues obtained from what is typically referred to as the "DIBELS Data System," are

received and managed for the UO through the Institute for the Development of Educational Achievement (IDEA). I have served as Director of IDEA since 1995. As Director, I do not receive any income, revenue or financial support from the DIBELS Data System or from IDEA. At all times I only received my normal salary as a tenured professor at the University.

Question #2:

2. Are you aware of any political contributions made by you, your employer, your business partners, or your family members since 2001? If so, please list your contributions.

Response:

To the best of my recollection, I made a contribution in 2002 of approximately $100 to Ted Kulongoski's Democratic gubernatorial campaign. Since 2001, my former wife, Brenda Johnson Kame'enui, has contributed $60 a year to the Oregon Education Association's political action committee. In 2005, she contributed $75 to Dollars for Democrats. I am not aware of any other political contributions that my employer (the University of Oregon and the Oregon University System), my family members or I have made since 2001.

Sincerely,

EDWARD J. KAME'ENUI.

[Responses to Mr. Scott's questions from Dr. Simmons follow:]

College Station, TX, May 4, 2007.

Hon. GEORGE MILLER, *Chairman,*
Education and Labor Committee, U.S. House of Representatives, Washington, DC.

Re: Response to Committee's Request dated April 30, 2007.

DEAR CHAIRMAN MILLER: The correspondence for Chairman George Miller requested the following information and I respond as follows:

1. How much money, directly or indirectly, have you. your employers, your business partners. or your family members received from the DIBELS assessment system including, but not limited to, the costs of scoring tests and the purchasing of DIBELS related technology?

Response: Neither I nor family members have received income from the DIBELS assessment system. I do not have information to be able to answer this question about other individuals or entities. I am not an author of DIBELs and earn no royalties from DIBELS.

2. Are you aware of any political contributions made by you, your employer, your business partners, or your family members since 2001? lf so, please list such contributions.

Response: Neither I nor family members have made political contributions since 2001 and am not aware of campaign contributions of other individuals and entities listed in your request.

Sincerely,

DEBORAH C. SIMMONS.

[Committee letters to witnesses follow:]

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July 18, 2007

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Dr. Roland Good
c/o Dynamic Measurement Group, Inc.
132 East Broadway, Suite 636
Eugene, OR 97401

Dear Dr. Good:

Enclosed please find a copy of the transcript of the April 20, 2007, hearing before the House Committee on Education and Labor entitled, "Mismanagement and Conflicts of Interest in the Reading First Program." As part of the Committee's ongoing investigation into the Department of Education's implementation of the Reading First Program, our investigative staff has reviewed the transcript in detail.

I would like to extend to you the opportunity to confirm, amend or clarify your sworn testimony. I urge you to review the transcript carefully and thoroughly. Please provide any corrections, amendments or clarifications directly to me at the address above no later than Friday, August 3, 2007. To insure that all responses are clear and readable, please provide your submission in typeface and designate each page and line(s) to which the response applies. You may also transmit your responses via email to me at Stephanie.Y.Moore@mail.house.gov within the required time frame.

If you have any questions, please do not hesitate to contact me at 202.225.3725.

Sincerely,

Stephanie Y. Moore

Stephanie Y. Moore
General Counsel
Committee on Education and Labor

cc: Hon. Howard P. "Buck" McKeon

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BOB BISHOP, UTAH
DAVID DAVIS, TENNESSEE
TIMOTHY WALBERG, MICHIGAN
DEAN HELLER, NEVADA

Lizette Benedi, Esq.
Bancroft Associates PLLC
1919 M Street, NW
Suite 470
Washington, D.C. 20036

Dear Ms. Benedi:

Enclosed please find a copy of the transcript of the April 20, 2007, hearing before the House Committee on Education and Labor entitled, "Mismanagement and Conflicts of Interest in the Reading First Program." As part of the Committee's ongoing investigation into the Department of Education's implementation of the Reading First Program, our investigative staff has reviewed the transcript in detail.

I would like to extend to your client, Mr. Edward Kame'enui, the opportunity to confirm, amend or clarify his sworn testimony. I urge you and your client to review the transcript carefully and thoroughly. Please provide any corrections, amendments or clarifications directly to me at the address above no later than Friday, August 3, 2007. To insure that all responses are clear and readable, please provide your submission in typeface and designate each page and line(s) to which the response applies. You may also transmit your responses via email to me at Stephanie.Y.Moore@mail.house.gov within the required time frame.

If you have any questions, please do not hesitate to contact me at 202.225.3725.

Sincerely,

Stephanie Y. Moore

Stephanie Y. Moore
General Counsel
Committee on Education and Labor

cc: Hon. Howard P. "Buck" McKeon

MAJORITY MEMBERS:

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CHAIRMAN

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COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

MAJORITY (202) 225–3725
MINORITY (202) 225–4527
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July 18, 2007

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VIA FACSIMILE (979) 694-8000 & U.S. Mail
Gaines West, Esq.
1515 Emerald Plaza
College Station, TX 77845

Dear Mr. West:

Enclosed please find a copy of the transcript of the April 20, 2007, hearing before the House Committee on Education and Labor entitled, "Mismanagement and Conflicts of Interest in the Reading First Program." As part of the Committee's ongoing investigation into the Department of Education's implementation of the Reading First Program, our investigative staff has reviewed the transcript in detail.

I would like to extend to your client, Dr. Deborah Simmons, the opportunity to confirm, amend or clarify her sworn testimony. I urge you and your client to review the transcript carefully and thoroughly. Please provide any corrections, amendments or clarifications directly to me at the address above no later than Friday, August 3, 2007. To insure that all responses are clear and readable, please provide your submission in typeface and designate each page and line(s) to which the response applies. You may also transmit your responses via email to me at Stephanie.Y.Moore@mail.house.gov within the required time frame.

If you have any questions, please do not hesitate to contact me at 202.225.3725.

Sincerely,

Stephanie Y. Moore

Stephanie Y. Moore
General Counsel
Committee on Education and Labor

cc: Hon. Howard P. "Buck" McKeon

[Transcript edits received from Dr. Kame'enui follow:]

August 3, 2007

Stephanie Y. Moore, Esq.
General Counsel
U.S. House of Representatives
Committee on Education and Labor
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Ms. Moore:

Enclosed please find additional information regarding my testimony before the Committee on April 20, 2007. I have from the very beginning indicated my desire to set the record straight about my involvement in the Reading First Program, and I hope that these clarifications assist in that endeavor.

Should you have any additional questions, I can be reached at 541.554.8646 or through my attorney, Lizette Benedi, at 202.416.0258.

Sincerely,

Edward J. Kame'enui

PAGES 157 – 158 (LINES 3745 – 3748)

During the hearing, Chairman Miller pursued a line of questioning concerning the insertion of an article authored by Drs. Simmons, Good, and me into both a "handbook" and "guidebook." At the time, I misunderstood the reference to the "handbook" or to the "guidebook" because it was the first time I had heard those terms used in this context. Although I now realize that these terms were used in one of the Inspector General's reports (and incorrectly, from my perspective), I did not focus on that report as it did not, either directly or indirectly, address my activities. I understood those terms to refer to the Department of Education's set of procedures and guidelines to states on the legal and technical requirements for the implementation of the Reading First legislation. However, I came to learn after the hearing that the use of the terms guidebook and handbook actually referred to the compilation of materials used by presenters at the Reading Leadership Academies. As a result, I want to clarify that given the intended meaning of this term, it was not accurate for me to state that I was not involved in the selection, preparation or inclusion of materials for the Secretary's Leadership Academies. As the team leader of the presentation on assessment tools, I would have communicated either directly or through staff at the University of Oregon with other presenters to indicate to presenters that they needed to provide any materials that they intended to rely on during their presentations. However, I believe that this would have been coordinated by staff at the University of Oregon and I would not have provided materials directly to the contractors who compiled the materials into one source, typically a three-ring binder that we referred to as "handouts" or presentation materials (not handbook or guidebook).

In addition, I would have provided materials for inclusion in the seminars dealing with my own presentation, and depending on the particular session, presentations of other presenters (e.g., Assessment Committee members). However, as far as whether I provided the article in question for inclusion, I have no knowledge of doing so. I do not believe that I would have provided the article for two reasons: (1) I do not recall mentioning the article during any of my presentations in the Secretary's Leadership Academies, and (2) as a researcher and academic professional it simply was not my practice to include a piece of my own work in a stand-alone presentation that was representative of an entire committee's effort (e.g., Assessment Committee), because it would be presumptuous on my part. The only way that I could possibly conceive of having provided such an article is if someone from the Department of Education had specifically requested its inclusion, although I have no recollection of this occurring.

Well after the hearing, when it was clear that this was an issue for the Committee, I attempted to find out from staff at the University of Oregon if they knew who had provided the article for inclusion in the materials. However, while there was some indication from staff that it would have come from someone at the University of Oregon, no one was able to identify the person who actually provided it. If I had provided this article, I would have no qualms admitting to it. Respectfully, contrary to the assertions, this article did not endorse DIBELS; rather, it provided a technical and statistical analysis of a fluency-based assessment tool using DIBELS as the example. In any event, although I cannot say with a 100% certainty that I was not the one who provided an article more

than five years ago, I simply do not recall having provided the article myself, nor do I know who within the committee provided it.

PAGES 100 – 102 (Lines 2331 – 2334)

With respect to the "packaging" of Early Reading Intervention (ERI) with DIBELS, I would like to clarify that at the time of the hearing, I had been away from the University of Oregon and directly from the publishing world for closer to two years, not three (as I indicated later in the hearing). Furthermore, during that time, I did indeed continue to receive royalties for my past work but did not have any direct involvement in Pearson activities, including marketing or endorsing of materials. In any event, I want to confirm that I was not aware that there was any type of packaging of ERI and DIBELS.

Pages 159 - 160 (Lines 3772 – 3776)

When Chairman Miller indicated that the Early Reading Intervention was "packaged" with DIBELS at the hearing, it was only the second time that I had ever heard such an assertion. The first time such an assertion was made was in a meeting with Chief Investigative Counsel, Michael Zola, a week or so prior to the hearings. Like many publishing contracts, my contracts with Pearson make clear that I have no control whatsoever over the marketing or packaging of any of the materials and thus, the company was not required to inform me of whether my materials would be sold with DIBELS.

In addition, I believe that the wording of the question conveyed that the two products were packaged together and a customer could not buy my product (ERI) without DIBELS, and thus that I had a financial interest in DIBELS. I believe that whether they are indeed sold together as a bundle by Pearson is unrelated to whether I had knowledge of such a scenario, which I did not. Furthermore, after the hearing when I was once again asked this question, and wanting to know whether my product (ERI) was indeed "packaged" with DIBELS, I through counsel made some inquiries regarding the assertion. To the best of my knowledge based on representations by the publisher, ERI can be purchased separately and DIBELS can be purchased separately. There is, however, a way that customers can buy them together. However, a customer does not have to choose to buy both or nothing, and many customers bought ERI without purchasing DIBELS, and vice versa. In any event, I do not believe that the "packaging" referred to in the question suggests that I somehow received royalties from DIBELS, which I never have, and I reaffirm my response that I had no knowledge of the way in which either ERI or DIBELS was marketed or packaged by the publisher.

Pages 84 -85 (Lines 1898 – 1901)

I want to clarify that when I mentioned that NIFL's involvement "became evident later, not at the time," I was referring to my understanding of NIFL's actual authority in determining whether the Reading First Assessment Committee's report should be posted. It was not clear to me until I read the Inspector General's first report that in fact NIFL

had the authority to determine if the Reading First Assessment Committee's report should be posted and made public. At the time I was told by Mr. Doherty to post the report, it was my understanding he had the sole authority to sanction such a public posting. In fact, during the development of the Reading First Assessment Committee's report, I did not have any direct contact with NIFL and did not know of its authoritative role in the RF program.

Page 133 (Lines 3114 – 3117)

Because the question focused on what reading programs the State of Oregon "selected" for use in Reading First, and not on what reading programs were reviewed and made available for school districts to select, my response assumed that the question was asking if I knew what specific reading programs schools who were participating in Oregon Reading First were currently using and implementing. Thus, as my response indicated, I did not know at the time (and still don't) what reading programs the Reading First schools in Oregon had selected to use and implement.

Pages 139 – 140 (Lines 3271 – 3278)

I want to clarify that I sought input on conflict of interest procedures from the Assessment Committee and in the absence of any explicit guidance from the Department of Education or the contractor, decided we should establish our own conflict of interest process and procedures, which followed the traditional academic standards for the industry.

[Transcript edits received from Dr. Simmons follow:]

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ATTORNEYS:

STEVEN N. ALLBRITTON
ROY D. BRANTLEY*
TERRANCE D. DILL, JR.
JAMES R. "JED" DORMAN
MICHAEL H. GENTRY**
KEITH L. KRUEGER†
MICHELLE L. LOWERY
DAVID T. POLING
KENDRA L. SUHLING
JOHN C. WEBB, JR.
GAINES WEST

OF COUNSEL:

FRED LOHMEYER***

1515 EMERALD PLAZA
COLLEGE STATION, TEXAS 77845-1515
TELEPHONE: (979) 694-7000
TELECOPIER: (979) 694-8000
WEB SITE: http://www.westwebblaw.com

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† LICENSED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

August 2, 2007

Stephanie Y. Moore
General Counsel
Committee on Education and Labor
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Via Electronic Mail

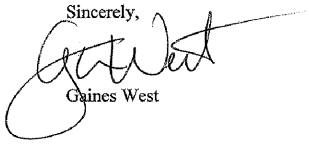
RE: Testimony of Dr. Deborah Simmons at the April 20, 2007 hearing before the House Committee on Education and Labor

Dear Ms. Moore:

We received the transcript which you forwarded, and we appreciate the opportunity given to my client, Dr. Deborah Simmons, to confirm, amend or clarify her sworn testimony. We have reviewed the transcript, and in the interest of full disclosure and accuracy, a memo by Dr. Simmons is enclosed which outlines any clarifications and/or amendments to her sworn testimony.

Should you have any questions, please feel free to contact me at my office. Thank you for your attention to this matter.

Sincerely,



Gaines West

Enclosure

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DATE: August 2, 2007

TO: Stephanie Y. Moore
General Counsel
Committee on Education and Labor

FROM: Dr. Deborah C. Simmons

RE: Transcript of testimony provided on April 20, 2007

Thank you for the opportunity to confirm, amend, or clarify the sworn testimony I provided to the U.S. House of Representatives, Committee on Education and Labor, on April 20, 2007. As requested my responses are designated by page and line numbers included with the transcript.

Page 40, lines 839-858

The following information *clarifies* my oral testimony regarding my involvement in national Reading First.

My national Reading First activities included delivering three presentations and one professional development workshop in 2002, and one professional development workshop in 2005 for staff of Reading First technical assistance centers at their request. These presentations were jointly developed by multiple reading professionals and reviewed prior to presentation. These presentations did not involve recommendations of specific reading programs.

I participated as a member of the Assessment Committee from fall 2001 to spring 2002. This committee was tasked with identifying and reviewing the technical adequacy of reading assessments that could be used in the Reading First program. I am not an author of any reading assessment reviewed by the Assessment Committee and I do not receive royalties from reading assessments.

With the exception of one workshop conducted in 2005 my involvement with national Reading First activities ended in 2002.

I have never been a staff member or director of a regional or national Reading First technical assistance center. As such, I was not involved in or responsible for the review of state applications for Reading First or federal decisions about which states would receive Reading First funds. I was not a federally contracted technical assistance provider who advised states on reading assessments or programs.

Apart from the work on the Assessment Committee and the limited presentations identified above, I was not involved in federal Reading First.

The following amends specific lines in this section of my sworn testimony.

I amend line 844 as follows: "First. It is my understanding there was no resource for schools to go to"

I amend line 849 as follows: "experts with whom I have ever worked. To my knowledge, they did not review"

I amend line 857-858 as follows: "of effective instruction, and were not designed to endorse or promote specific programs."

Pages 90-91, lines 2048, 2052, & 2055

In response to the question from Mr. Castle about the Diagnostic Reading Assessment and Reading Recovery:

I amend line 2048 as follows: "I am not familiar with the specifics of the Diagnostic"

I amend line 2052 as follows: "about 5 years ago that was published I believe in the Educational"

I amend line 2055 as follows: "As I recall, overall the conclusion was that after a summary of"

Page 94, lines 2143-2144

In response to the question from Mr. Castle, I amend lines 2143 to 2144 as follows: "included conflicts of interest and no one reviewed a program on which they were an author."

Page 97, lines 2218-2223

In response to the question from Mr. Castle about my involvement with DIBELS, I amend lines 2218 to 2223 as follows: "I am not an author of DIBELS. I have never received royalties from DIBELS."

Pages 101-103, lines 2304-2329 and lines 2338-2374

The following information *clarifies* my oral testimony regarding the connection between the Early Reading Intervention (ERI) and DIBELS.

At the time of my testimony I stated that DIBELS is not part of ERI. That is correct. DIBELS is not part of ERI. It is not included in the ERI program.

I also stated that I was unaware that DIBELS is packaged and sold with ERI. That was my understanding at the time of my testimony. In preparation for this response, I spoke with Scott Foresman during the week of 7/23/07. Scott Foresman confirmed that DIBELS is not part of ERI. I was informed, however, that the Marketing Division of Scott Foresman had created an ISBN number that allows customers to purchase ERI and DIBELS together. The decision to allow customers to purchase DIBELS and ERI together was a marketing decision made by Scott Foresman. I was not consulted or involved in this marketing decision, and this was confirmed by Scott Foresman. I was unaware of this marketing decision at the time of my testimony.

I am not an author of DIBELS and I do not receive royalties from DIBELS. I was not involved in negotiations or acquisition decisions by Scott Foresman to incorporate DIBELS in the Scott Foresman line of products.

The following amends specific lines in this section of my sworn testimony.

I amend lines 2310-2312 as follows: "I receive no royalties from DIBELS."

I amend line 2327 as follows: "I am not aware of that."

I amend line 2329 as follows: "I am not aware of that."

I amend lines 2346-2347: "I was working with Scott Foresman on the Early Reading Intervention program. DIBELS is not part of the ERI program."

I amend lines 2350-2351: "No, sir. Early Reading Intervention does not include DIBELS."

I amend line 2369 as follows: "I was negotiating a contract with Scott Foresman to publish the Early Reading Intervention. The ERI does not include DIBELS."

I amend line 2374 as follows: "I do not receive any royalties from DIBELS."

Page 114, lines 2637-2647

In response to the question from Mr. Castle (lines 2625-2635), I amend lines 2637 to 2647 as follows:

"The Consumer's Guide for Core Reading Programs was developed in the late 1990's and published in 2000. It was created to help schools evaluate whether core reading programs incorporated scientifically-based practices. As designed, the Consumer's Guide does not include a list of approved reading programs. It is a tool that can be used to evaluate any core reading program. It was developed before Reading First. It was not developed for Reading First. I remember being asked by a colleague at the University of Oregon if we had any tools that could help evaluate reading programs, and I reminded him of the Consumer's Guide. I was not involved in the decision to include the Consumer's Guide in Reading First materials, nor did I ask for the Consumer's Guide to be part of Reading First. As noted elsewhere, I was not involved in review of state applications for Reading First, federal decisions about reading programs to be used by states under Reading First, or federal decisions about which states would receive Reading First funds."

Page 158, line 3738

In response to the questions from Chairman Miller regarding a 29 page article included in a Reading First handbook or guide, I amend line 3738 as follows:

"handbook. I did not develop the handbook or guide. As noted elsewhere in my testimony, my involvement in national Reading First included only a limited number presentations and time-limited work on the Assessment Committee."

Pages 160-161, lines 3777-3817

In response to questions from Chairman Miller:

I amend lines 3783-3785 as follows: "The Early Reading Intervention does not include DIBELS. I am not an author of DIBELS. I receive no royalties from DIBELS."

I amend lines 3800-3801 as follows: "I was negotiating with Scott Foresman to publish the Early Reading Intervention. This reading program was developed originally in the late 1990's, before Reading First. The ERI is used in schools throughout the entire country. Some of these schools are Reading First schools and many are not."

I *clarify* line 3807 as follows:

My use of the word "it" refers to Early Reading Intervention royalties.

I amend line 3813 as follows: "About 5 years. Yes, sir."

[Follow-up testimony from Ms. Lewis follows:]

Follow-Up Testimony of Starr Lewis, Associate Commissioner, Office of Teaching and Learning, Kentucky Department of Education

As I mentioned during my testimony on April 20, 2007, I had not seen any of our Expert Panel review forms until I received them from Ryan Holden on April 19, 2007. I had requested to speak with our Expert Panel members or to see their comments during our application process, but I was told by Chris Doherty that we would not be allowed to speak to panel members or know their identities and that we could not see their actual reviews. On April 19, 2007 I received two forms labeled Reading First Panel Chair Summary Forms and three forms labeled Technical

Review Form Summary Sheets. Attached is a chart that compares the information included in the five forms with the three Expert Review Team Reports we received from Reading First staff.

As one can see from the chart, there are discrepancies between the information on the Expert Panel forms and the staff summaries. Furthermore, it is impossible to know which form applies to a particular submission. In any case, if there were four members to each panel, we should have received four Technical Review Forms per submission and one Reading First Panel Chair Summary Form per submission. The forms provided by staff represent only a fraction of the documentation that should be available.

Also, the discrepancies between the panel members' forms and the staff summaries might suggest that there was some discussion between staff and panel members, but again, one would reasonably expect some documentation of those discussions.

Since I had to leave before the end of the hearing, I would like to take this opportunity to respond to Representative Sarbanes' question that he said he would have liked to ask me. He said he would ask me to reflect on and discuss the impact on morale in the field since we had made a "good faith presentation" not realizing the impact of the process on funding decisions. I must say that it was discouraging at the time because so much effort and time went into the repeated revisions and resubmissions. My staff members and I spent an inordinate amount of time and talent on this process, time and competence that could have spent on more productive work.

After seeing the discrepancies between the panel member comments and the staff summaries, I am even more discouraged. I would ask members to give particular attention to the Technical Review Form Summary Sheet with Review Code C4. On that form, eight ratings were changed, by whom I have no way of knowing. Six ratings were changed from "Meets Standard" to "Does Not Meet." One was changed from "Meets Standard" to "Exemplary." One was changed from "Meets Standard" to "Does Not Meet Standard." I would also ask members to notice that the original rating from C4 on the standard related to Instructional Assessments, the standard that repeated caused us not to receive funding, was "Meets Standard."

Much of the discussion during the hearing was focused on how to improve the process in the future. My hope is that the process will be transparent and open and that states will have access to panel members.

Again, I thank the Committee for the opportunity to share Kentucky's experience related to Reading First.

During the Reading First application process starting in June 2002 through final approval of the application in April 2003,the Kentucky Department of Education received three Reading First State Application Review-Kentucky Expert Review Team Reports. In the chart below, a comparison of discrepant statements found in those reports and the technical review panel and panel chair summary sheets provided to the Kentucky Department of Education in April 2007.

It is important to note that in April 2007 only two Reading First Panel Chair Summary Forms were provided and only the final review was stamped with a date and time (April 10, 2003 12:03). Therefore, it is difficult to determine which Kentucky Reading First submission is reflected in the comments on the Technical Review Form Summary Sheets because no date is recorded. All comments on the three summary sheets appear to reflect only the first or second submission. One other note of interest is that on the front of all forms provided (both Panel Chair Summary Forms and Technical Review Forms) a typed notation (b)(6) was entered into a small box where the Panel Chair or Reviewer was to provide a signature. No explanation of this notation was provided, but page 6, item b states "Providing evidence that assessments are valid and reliable and are aligned with the instructional program."

Section/Criterion	Reading First State Application Review-Kentucky Expert Review Team Report provided to KDE by Chris Doherty and Sandy Jacobs	Reading First Panel Chair Summary Form 4A and 4 (fourth review and the Technical Review Form Summary Sheet (Identified as Reviewer Codes C4, 4D, and 4E)
I. Improving Reading Instruction—District and School Based Professional Development—	First Submission "* * * the proposal does not provide criteria for evaluation the content of district and school based professional development plans * * *"	Criteria for evaluation of content were not a part of the rubric for this section, and the comment was not reflected in the summary statements.

Section/Criterion	Reading First State Application Review-Kentucky Expert Review Team Report provided to KDE by Chris Doherty and Sandy Jacobs	Reading First Panel Chair Summary Form 4A and 4 (fourth review and the Technical Review Form Summary Sheet (Identified as Reviewer Codes C4, 4D, and 4E)
State Outline and Rationale for Using Scientifically Based Reading Research	Second Submission Concern about independent reading-comments that the Reading Panel meant repeated oral reading with feedback and guidance-not independent reading	Reviewer Code 4E stated ''quotes concepts that are not supportive of SBRR''-no specific examples were provided
Instructional Strategies and Programs	Second Submission ''The review team noted that these two sets of standards [IRA Standards and the Children's Literacy Rights] are more global, resulting in a disconnect * * *'' Second Submission ''The review team encourages the State to consider submitting a draft sub-grant application. The team is aware that this is not a requirement, but feels it may help to demonstrate how the sub-grant selection process will result in selected schools meeting the requirements related to instructional strategies and programs, which is necessary to satisfy this criterion.''	Found no reference by reviewers or panel chair to these two sets of standards. No comments from reviewers or panel chair mentioned submission of a sub-grant in this criterion. However, the panel chair (4A) states in the Instructional Materials criterion ''Require sub-grant selection procedure to indicate how * * *'' and Reviewer Code 4E indicated, ''selection of programs-matrix needs criteria.'' It is worth noting that the criterion related to subgrants always met standard and Reviewer Code 4D indicated the process is ''clear and concise—very easy to understand.''
Instructional Materials	Second Submission ''The team also noted that the matrix does not include decodable texts.''	No reference to decodable texts found in any of the comments.
District and School Based Professional Development	Second Submission ''* * * the review team found the criteria the State will expect to see in sub grant applications to lack an intense focus on scientifically based reading research and expressed concern that training in scientifically based reading instruction will be layered on top of existing programs.'' ''The content is not entirely focused on the five essential components and scientifically based materials, programs and strategies, as topics such as literature circles and leveled text are also included.''	Reviewer Code C4 states in the Instructional Materials criterion, ''TA will be needed to understand how to layer programs and determine how they work together to meet the needs of diverse learners.'' Reviewer Code 4D noted ''? bii (SBRR)'' as a comment. Bii refers to the rubric statement at the top of page 10 * * * implementing scientifically based instructional materials, programs, and strategies. However, no specific topics were offered as examples on this reviewer comment page or any other reviewer comments.
II. State Leadership and Management		
III. State Reporting and Evaluation	All reports reflect all criteria to the State's reporting and evaluation strategies met standards.	
IV. Classroom Level Impact Key Reading First Classroom Characteristics	Second Submission ''* * * the review team still found a disconnect between classroom instructional activities and scientifically based reading research in the table that connects grade expectations, program of studies and core content for assessment. The benchmarks are appropriate, but do not appear to match with all of the corresponding activities. For example, there is no mention of decodable text. The focus is on predicting and using context clues.''	The terms ''decodable text, predicting, context clues'' are not found in any comment. Reviewer Code C4 states, ''The summary provided under phonics for Kentucky RF classrooms describes a practice that SBRR indicates is not the most effective way to teach phonics.''

[Whereupon, at 2:19 p.m., the committee was adjourned.]

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