U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING ON THE CIVIL RIGHTS IMPLICATIONS

OF RECENT EDUCATION INITIATIVES

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FRIDAY,

APRIL 13, 2001

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WASHINGTON, D.C.

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The Commission convened at 10:56 a.m., in Room 540, 624 9th Street, N.W., Washington, D.C., Chairperson Mary Frances Berry, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON
CRUZ REYNOSO, VICE CHAIRPERSON
CHRISTOPHER EDLEY, JR., COMMISSIONER
YVONNE Y. LEE, COMMISSIONER
ELSIE M. MEEKS, COMMISSIONER
RUSSELL G. REDENBAUGH, COMMISSIONER
ABIGAIL THERNSTROM, COMMISSIONER
VICTORIA WILSON, COMMISSIONER

LESLIE R. JIN, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLY ALTON
DAVID ARONSON
KI TAEK CHUN
TERRI DICKERSON
PAMELA A. DUNSTON
BETTY EDMISTON
M. CATHERINE GATES
GEORGE HARBISON
EDWARD HAILES, Acting General Counsel
MYRNA HERNANDEZ
PETER REILLY, Parliamentarian
KWANA ROYAL
DAWN SWEET
MARCIA TYLER
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
PATRICK DUFFY
ELIZABETH OUYANG
CHARLOTTE PONTICELLI
SCOTT SCHREIBER
EFFIE TURNBULL

A-G-E-N-D-A

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

(10:56 a.m.)

CHAIRPERSON BERRY: Could the two panels come forward, Professor Ramirez and Professor Hakuta?

Thank you very much for coming. As part of our ongoing efforts to keep informed on civil rights issues, the Commission has held a series of briefings in conjunction with our regularly scheduled monthly meetings.

Today's briefing concerns the civil rights implications of recent education initiatives and proposals, and promises to address some of the most important concerns currently under consideration in our nation. I think most people would agree that education is key to the empowerment of our people. And many of our schools are very successful; some are not.

A number of proposals have been advanced to improve the quality of K through 12 education. The Commission is concerned about these issues, and mainly we are concerned within our mandate about an equal opportunity for all children to receive a quality

education.

For the purpose of educating ourselves and the public, we have before us today some distinguished experts who will discuss this subject. On our first panel, we have, first of all, Dr. Kenji Hakuta, who is the Vida Jacks Professor of Education at Stanford University, where he teaches courses on language development, bilingual education, and research methods.

He conducts research in psycholinguistics, bilingualism, languages, and the acquisition of English by immigrant students. He is professionally active in the areas of language policy, education of language minority students. He is the author and editor of several books on the subject, one including -- he recently chaired a committee of the National Research Council, which issued a report "Improving Schooling for Language Minority Children: A Research Agenda." He is a Ph.D. educated in experimental psychology from Harvard University.

Professor David Ramirez is the Executive Director for the Center for Language Minority

Education and Research and a professor in the College of Education at California State University Long Beach.

The Center's mission is to develop and promote systemic change in schools and communities to assure equitable opportunities for diverse populations. Its work is concerned with promoting social, economic, and political justice for all sectors of this diverse community.

He has written also a number of books dealing with education issues, and he is a specialist in the design and evaluation of education programs for language minority students. He is a Ph.D. in child development, educated at Stanford University.

This first panel will talk about their equal educational opportunities and bilingual education. We will begin with Professor Hakuta. Please proceed.

I. Panel I: Equal Educational Opportunity: Bilingual Education

DR. HAKUTA: Thank you very much, ladies and gentlemen of the Commission. I feel honored and

privileged to have the honor of wearing this microphone.

(Laughter.)

And I was asked to keep my remarks -- I will refer to a longer written document that I sent before this. And I tried to organize my remarks around the three standards that have been used based on a -- a court case, Castenada v. Piccard, which has been quite influential in the way in which people think about appropriate and adequate services for English language learners.

I'll use the terms English language learners and LEP, limited English proficient, interchangeably. As you know, we've been struggling with this issue for a very long time. And as with -- as is true when you struggle with issues for a long time, you keep changing the names thinking that somehow the problem will solve itself.

(Laughter.)

But they really do refer to the same thing. And the three standards of Castenada are, one, that a program be based on sound educational theory.

The second prong is that it be -- the theory be implemented adequately with resources.

And, third, that after a period of time that it be evaluated to see whether the issues are addressed and whether the problem is being solved. And, fourthly, perhaps -- there is sort of a fourth prong, which is that if it's not working you ought to go back and reexamine the theory or reexamine whether you're faithfully or adequately implementing the theory.

And I think that there are issues in each of those prongs, and that's how I would like to organize my remarks. On the first prong, which is whether the program is based on sound educational theory, I think there is quite a bit that, at least the research says, that can inform the way in which people think about these policies.

The first has to do with expectations about how long it would take kids to learn English, particularly academic English, the kind of English that's needed for children to be competitive in school. So that they're not handicapped by the

condition that's triggered by Lao v. Nichols, a limited English proficiency area with language learner status.

And the research is quite clear about the period of time that it takes kids, that if I were to put a number on it it would say somewhere between four to seven years is how long it would take children to learn so-called "academic English," sufficient English to be able to take advantage of an English only instruction competitive with native English speaking peers.

This varies quite a bit by the student socioeconomic status, and the parent's formal educational background, such that students who are of -- whose parents come with little formal education don't have the kind of resources at home, that it definitely takes them longer.

So they are on the longer end of that four- to seven-year period. Those come from, you know, visiting scholars to Harvard to places like that, and they stay quite a bit shorter than four years, but there's a range.

And so we certainly know that theories that are extremely short -- that is, one-year or two-year expectations about language learning -- is inadequate and unsupported by theory.

The second point would be that in spite of all of the political battles that run over bilingual education programs -- and that's seen with an issue -- ballot initiatives in California like 227, or what Arizona just recently passed, or things that are being thought over in Colorado or Massachusetts and New York.

That the research is quite clear that, all things being equal, there are advantages of bilingual education over English only instruction. It's not going to solve all of the problems that face English language learners in the schools, but the theory is, again, quite clear that all things being equal you will find advantages of bilingual education over English only.

So issues -- things like that I would put under the category of Standard 1. That is, if you're talking about what should be sound educational theory,

such facts I believe are important. And I'm sure that my colleague, Dr. Ramirez, will point to others as well.

On the second standard, which is adequate implementation of a program, we certainly know that one of the important features of successful programs for English language learners is high quality and consistent programming. There was a study that New York City recently -- the Board of Education recently released comparing children in different kinds of programs that they followed over a period of years.

And while people who fight the fight between bilingual versus English only programs might look at the differences that they found between the bilingual and the ESL programs, the really striking thing about the data were the children who were in the so-called mixed programs -- the programs where kids were, you know, in bilingual -- getting a bilingual teacher one year, an English only teacher a second year, some maybe because they moved, but inconsistent programs.

Those kids were way underperforming

compared to the kids in the consistent programs that were getting in English or in bilingual. So factors having to do with high quality, consistent programming are really, really quite important.

I suggest that, you know, if you're going to have a sound theory -- and there are many different sound theories one could legitimately argue for -- that sticking with it and having a good, consistent program that goes along with it is -- is going to be very important.

And this is supported by research on school climate, school organization. That applies not just to schools for English language learners but for native English speakers as well.

Another aspect of the second standard on implementation, we're in an era of standards-based reform. Everyone is talking about standards and assessment and accountability. And there is a real need, if you're going to talk about the inclusion of English language learners and standards-based reform, to talk about standards that are also specific to English language learners.

That is, while we would also say that all, you know, English learners should be given access to the same high standards as you would have for all students, they also have needs. That is, they come with limited English proficiency, which is why they're -- you know, they are classified as such and are in special programs.

And so the development of standards in English -- academic English development that -- that ramp up to the level of English -- academic English as expected of native English speakers is very important.

I would also point to issues of teacher quality and academic preparation. Just to give you an example from California, there are probably -- and these are, you know, estimates that are -- that are clearly crude. But there are probably well over 100,000 public school teachers in California who have English language learners in their classrooms.

But if you look at the number of teachers who hold various credentials that -- that include fairly basic things like understanding English language development -- just being a speaker of

English, for example, doesn't always qualify you to be a teacher of English as a second language.

There are probably only about 16,000 teachers that would fit in sort of as having credentials, and so we really are talking about considerable undercapacity in terms of teacher qualifications.

In addition, these -- you know, these shortages are especially acute in the high poverty schools. So those are sort of prong -- or Standard 2 issues.

And then, finally, in terms of Standard 3, the accountability part of assessment and accountability, we are seeing a lot of cases of inclusion of English language learners in various accountability systems, but inclusion inappropriately or inadequately.

So in California, for example, our -- the tests that are being given to students beginning from the first year that they arrive in this country -- is the SAT 9 -- Stanford 9. I'm from Stanford, but I disclaim any affiliation to that test which happens to

bear my institution's name.

But the SAT 9 is a test that was developed and normed on native English speakers. And there are -- the test scores that are reported, for example, in the newspaper, and so forth, that affect real estate prices, are based on percentile scores based on that norm.

That test is not an appropriate measure of looking at English language development for second language learners. It is not -- you can't take a norm -- you know, a fifth percentile score on that test is uninterpretable in that context of what it means in a norm-referenced test.

And so we have lots of cases of accountability systems that are being developed where what is being measured is not what the test was intended to measure. But, rather, it's some very uninterpretable measure that's probably dependent on their English language development.

So their math scores would be influenced by, actually, their English development, which is not anything that a credible test publisher would even try

to defend. And so we have issues of, you know, availability and access into this accountability system.

There is very complicated issues, which I'd be happy to go into, of how do you include or exclude? If you exclude, what are the other sort of alternatives out there that one might want to raise with respect to accountability?

Some states are doing it better for some populations than others. We may be able to learn from them.

And then, finally, it's sort of -- the fourth standard that I alluded to is the ability of a system to take advantage of the outcomes and be able to use that to improve itself. That is, that feedback that, you know, if your kids aren't doing well, shouldn't you actually go back and reexamine whether you're doing a good job of recruiting teachers who are qualified?

Shouldn't you go back and wonder whether, as is happening in California, a separate policy initiative like class-size reduction, is having the

effect of essentially taking the well-qualified teachers in the high poverty, limited English proficient schools, and bringing them into the more affluent communities.

So, you know, the implementation -- or even go back to the theory and say, you know, shouldn't we examine whether, you know, this theory or expectation that kids can learn English competitively within one or two years is working or not.

I think states and districts need help to develop the will and the backbone, to stand up against sort of the pressures of accountability that are coming down from sort of the politics and the federal level. So I will stop there and yield my time to David.

CHAIRPERSON BERRY: And then we'll have Professor Ramirez, and then we'll have lots of questions to ask. We know academics like questions.

Professor Ramirez?

DR. RAMIREZ: Thank you. It's a real pleasure to be here today.

I want to take a slightly different tact.

When I was -- a lot of the work that we do at our center is actually working very intensively with teacher training, working with school site administrations. I worked a lot with school districts, helping them try to figure out how to design services for limited English proficient students, and also especially immigrant students.

So my comments are going to come from taking I guess the three things that are found in the -- in the proposed "No Child Left Behind" legislation, where it kind of stresses research-based action, flexibility, and accountability.

As Dr. Hakuta already mentioned, one of the -- there is research that actually suggests that there are a range of alternative strategies that can be effective in working with limited English proficient children, anywhere from English only strategies for some children to primary language instruction, primary language development, and content instruction of primary language for others, and that there is -- that there are options there.

And one of the things I learned, having

worked with the State Department of Education for a number of years and looking at legislation, is you never want to require something that's overly restrictive.

So one of the tenets that this particular piece of legislation proposes -- to provide people with flexibility -- does just the opposite. By pointedly not mentioning the word "bilingual" or primary language development or primary language content instruction throughout the legislation really unnecessarily limits and restricts parental choice, the rights of local school boards to determine for themselves or states the kinds of instruction they would like to see for their children.

So that's one problem that I had is that it's a little bit inconsistent in terms of the issues of flexibility.

Another major concern that I had in the legislation is that it bundles together limited English proficient students with immigrant students, where the students are -- the range of students are provided services under Title VII. And my concern is

by block granting that whole effort we're going to really pointedly put a number of these children at risk, specifically, or especially immigrant students.

I had the pleasure of conducting a five-year study with the Andrew Mellon Foundation, looking at trying to restructure middle schools and secondary schools to better respond to the needs of immigrant students. We had over 2,000 kids and their families who were involved in this particular study, and what I found was over two-thirds of many of these immigrant students were clinically at risk for post-traumatic stress disorder.

To be clinically at risk, it's the same amount of violence that a returning combat veteran would have experienced. We know from the clinical work that children or people who have been exposed to that degree of violence within a period of years -- the first two or three years we may not see too many reactions, but after a while they start impacting their particular behavior.

What was interesting was that -- well, that was one area of need that I found among the

immigrant population. Another area was we have large numbers of students who were coming in to our middle schools and high schools with little or no prior schooling.

So what do you do when you have a 16-year old show up on your doorstep, who has never been to school in their own home country, does not read or write in their own primary language, has never been to school.

It's really unrealistic to expect that the high school is going to be able to provide that child with 13 years of education in two years so they can graduate on time and meet all the benchmarks. The traditional high schools just really are not meant -- are not set up for that.

So I find that teachers and schools are frantically trying to figure out what to do. There's very little research that's available to guide teachers and school personnel on how to provide these kinds of programs for these students. That's assuming, of course, that teachers even know that the kids are immigrant students.

One of the surprising things that I found was when I -- we pointedly asked teachers and principals, "How many of your children that you're working with actually are immigrant, or not born in the United States?" Consistently, they underestimated by 300 percent.

So, in other words, they don't know which of the students are immigrant. They really don't differentiate them from native-born limited English proficient students. And as a result of that, they end up developing all kinds of instructional procedures and organizational programs that essentially exacerbate the isolation and some of the victimization that these immigrant students encounter.

By block granting and not targeting the population, it creates a situation where no one is going to look at them. I mean, even with this kind of funding in here, they have to really put an effort to really look at their enrollment to see and try to discover the needs of these children.

Also, similarly, the immigrant families -- many of them are not at all familiar with how our

schools are organized, what's expected of students, what's expected of them, how they communicate with school personnel.

And school personnel don't know how to do this, and so they don't sit up those kinds of procedures, so they don't tell parents what the kids are supposed to take if they want to get into college, what they're supposed to take to be able to graduate, the importance of extracurricular activities in the overall development, how that's valued in our culture here.

In some of the work that we do, we work directly with parents and school personnel around homeschool and community collaboration and work. And one of the issues that came up in talking with the parents was college preparation.

And so they were surprised to find out from the principal that the counseling staff had had a college night. None of the parents knew about it. They said how many parents had shown up. They said 25 out of a school of 1,200 students.

So the parents said, "Well, could we help?

If we got together and helped, could we have another one?" They did. They had a turnout here of -- over 300 families had shown up. Now, from last count I got just a few months ago, a couple of months ago, they had over 400 families that have shown up.

The issue is: school personnel are ill-equipped to how to communicate and outreach to these -- to the secular community.

One of the other concerns is even when the community, for example -- even when the community has a large number, very, very visible number of immigrant students -- like, let's say, Long Beach is the major port of entry, and had the opportunity of working with the school district as they were trying to respond to corrective action being taken by their state, by the California Department of Education, for failing to provide services to limited English proficient students, most of whom were immigrant.

And they were quite excited when I -- to tell me all of the things they had been doing. They totally restructured their entire curriculum standards for their population. Over two-thirds of the children

are language -- are limited English proficient, most of whom are immigrant students.

So I asked them, who was involved in developing these new content standards? They said, "What do you mean?" I said, "Were there any bilingually certified teachers, any ESL certified teachers?" They said, "No." I said, "Really?" They had just totally revamped the curriculum for a population that doesn't exist.

They didn't do it intentionally. It just never occurred to them. So the issue is, these particular -- unless we have some sort of frame to help guide people to think about these populations, they're going to go unnoticed.

One thing I failed to mention earlier is by the -- the way that the proposed legislation as set up, by not mentioning primary language instruction, it would have kind of an impact -- a significant impact on California alone. Currently, right now, 40 percent of our school districts in California offer primary language instruction, primary language development, as an option to their communities.

If I would -- my sense would be if this legislation were to be passed, it would automatically disqualify those districts, because it's not mentioned that these are things that they could do with that kind of funding, even though this is what those communities have decided for themselves.

One of the impacts -- I think some of the experience that I've been observing looking at the impact of Proposition 227 is very similar to what's being proposed in the No Child Left Behind legislation, in the sense of trying to really increase the number of children who are provided with English only instruction and trying to increase the rate at which they are able to acquire English and to move them out into the mainstream classrooms.

What we found or -- did a survey of about 25 percent, a random survey of about 25 percent of our school districts in the state.

And one of the things that I noticed from the reports from the districts are that what's happening is instead of facilitating the integration of limited English proficient students with native

English speaking populations, they're essentially being segregated at a much higher rate that I hadn't seen for a long, long time, under the notion that we've got to try to get these kids in and out real fast or we're going to pull them up together and move them out.

But we know from language development research that by providing students opportunities to interact with native English speaking models actually facilitates their acquisition if it's done in an appropriate fashion.

So what's happening, they are isolating these children, keeping them to themselves. And the only person they can talk to is the teacher who speaks English. The rest of the day they interact with only other limited English proficient students, so that kind of retards their development in terms of English language development.

What's even more disturbing is that the districts reported that as they tried to provide content, access to the core curriculum through what we call sheltered English content instruction -- that is,

that the teachers, in providing the math lesson, not only is using very good instructional strategies around math but has embedded in it very clear notions of the specific speaking, reading, writing, and comprehension skills that are needed in English to be able to do that math lesson in English.

So the teacher is doing double duty. We refer to it as sheltered content instruction. What we found was that in the concern to try to really provide the students access to the core content, the teachers have had to essentially lower their content standards for the kids.

They are giving up the breadth and the depth of the content area, because they can only get -- given the amount of time they have, they can only hit the highlights. And those standards are markedly different from what they're providing native English speaking students.

This does not only raise the issue of unequaled treatment, unequal access to the core, but it really documents the challenges -- the unrealistic challenges schools are facing to try to provide a

program that will successfully mainstream all these children within three years. It's just not possible. And so we need more realistic models of how -- of what might be done to provide more successful instruction.

Dr. Hakuta has already talked about the problems with high stakes testing in this. I personally am not one to talk about we should not test. In fact, I'm one of the ones who -- I think I'm one of the few ones that said, "You know, if the kids come in, day one we need to know what -- how well they're performing in English, even if they've never spoken a word of English before, I need to know that."

Because the way that the legislation is set up is that these children are not supposed to be tested until after three years that they've been here, which means we don't test them until four years after they've been here. That's almost -- you know, assuming they came in in kindergarten, that's over a third of their entire school career. We don't know whether or not what we're doing is actually being successful.

My sense is -- my concern, though, is in

testing, if you're going to test them in English, which I think we should do, that it not be used for high stakes. What it does -- I use it more as an informal guide to tell me how well these children develop academic language in that content area.

I advocate providing them with assessment in the primary language to really get an understanding of what they actually know, until such time that their English is sufficiently high enough and comparable to their native English speaking peers, so that they can continue on.

Those are some of the high points. Oh. The one thing I really do like about the -- the one thing I thought was fairly strong in a proposal is asking states to develop English language development content standards. In my work across -- schools across the country, most English language development instruction is in a state of anarchy.

That is, teachers within the same grade at the same school are doing different things in English language development. And as they go to the next grade, those teachers are doing something completely

different, so the students are not getting an articulated program. I think that part is very strong.

My problem is with the accountability section that it -- once again, it waits for three or four years before we can assess whether or not these children are actually developing English language development. To me that's a little -- just a little too late.

CHAIRPERSON BERRY: Well, we'll have lots of questions.

DR. RAMIREZ: That's it. Yes.

CHAIRPERSON BERRY: Okay? Thank you very much, Professor Ramirez.

Commissioners, do you want -- first of all, tell us, for those who don't know in the audience, what Proposition 227 is. Just succinctly.

DR. RAMIREZ: Proposition 227 essentially requires that all limited English proficient students, upon entering the school district, be provided with English only instruction. And that they need to be there for -- minimal at least three months before the

parents can request that they choose an alternative program that is primarily language instruction. They have to wait at least that long before they can be pulled out.

CHAIRPERSON BERRY: And it passed in California.

DR. RAMIREZ: It passed in California. It's now -- an even more restrictive measure has been passed in Arizona, from the point of view of teachers.

CHAIRPERSON BERRY: Commissioners, any Commissioner have any comment on this, or any questions? Yes?

COMMISSIONER THERNSTROM: Well, thank you very much for coming. This is actually an issue I started to write about in 1979, I think it was. But I have not followed it closely in the intervening years.

Nevertheless, I do notice -- and I am certainly no expert on it, therefore, it really have been very peripheral to my interest -- nevertheless, I do notice that you did not address the -- either of you -- the rather -- now rather extensive literature

suggesting that the California post-Prop. 227 story has been one of enormous success.

And there, of course, has been a lot of press. I mean, you've got -- I'll just pick one example at random here. Robert J. Samuelson says, "What happened in the wake of Prop. 227? Test scores of children from Spanish speaking families didn't drop -- they rose -- and second grade average reading scores of students with limited English ability have jumped in the past two years, from the 19th percentile nationally to the 28th percentile. In math, the same students went from 27 -- the 27th to the 41st percentile according to The New York Times."

"I thought it would hurt kids," Ken Noonan, Superintendent of Schools in Oceanside, a city north of San Diego, told The Times 30 years ago. He helped found the California Association of Bilingual Educators. "The exact reverse occurred, totally unexpected by me. The kids began to learn, not pick up, but learn formal English, oral and written, far more quickly than I thought they would."

And it does seem to me that if this

Commission is going to make any sort of statement on this question that it does need a summary of existing data on the impact of Prop. 227. There is quite a bit of it.

CHAIRPERSON BERRY: Commissioner Thernstrom, why don't you simply ask the two scholars their response? Perhaps they will tell us.

COMMISSIONER THERNSTROM: Well, okay. I mean, I would like their response. But I would also like the Commission to -- since they haven't provided the data, I would like the Commission to do so.

Let me just ask you, then, two other questions. I mean, you have made a lot of factual assertions this morning that I have difficulty with. But, really, just to name a couple of them, you talked about the isolation and segregation of students today. I always thought that was a grave problem under -- with bilingual ed, that you had segregated education for Hispanic students.

You also had many students being assigned to bilingual classes, it is my understanding, who in fact knew English better than they knew any other

language. And you've had a long record of students not, in fact, acquiring English in bilingual classes but remaining there for seven years, eight years, and being at a tremendous disadvantage by the time they graduate from high school.

So those are some of my concerns. It's a short list of my -- the long list of concerns that I have on the basis of your testimony.

CHAIRPERSON BERRY: Professor Hakuta, and then Professor Ramirez, we'll give you an opportunity to respond. But I would point out that the Commission had a briefing paper several months ago from the Office of Civil Rights Evaluation on bilingual education in which it considered all of the various aspects of bilingual education.

I'm not referring to the short briefing paper that the Commissioners will get in advance of this briefing, but an earlier briefing paper. I've forgotten when the date was, but we were all given -- which was a very nice summary of all the research on this.

Also, we're not concerned here with trying

to figure out whether we're issuing a statement. We're trying to educate ourselves about the issues. But with that, I'll let you answer the question.

DR. HAKUTA: Sure. Let me address the text of Proposition 227 as an issue, because that's something that I have been following. I referred earlier to the SAT 9 being an inadequate measure of progress of students. And it's a bit like -- I just -- my father-in-law just last -- a few months ago persuaded me to start playing golf, and I decided maybe I was getting old enough to start.

And what I did, you know, if I tried to -- if I watched the Masters and then decided that I should go and keep my own score, it is a very inadequate measure of my game -- if I kept score faithfully, because I whiffed the ball, the ball goes all over the place, and it's just miserable.

So what's really a much better measure of it is how -- you know, what percentage of my shots are solid hits, and so forth. And so, I mean, this is not to embarrass myself publicly, but that's the state of my game.

And the SAT 9 is a bit like that, and, that is, what we don't have right now is a measure for English language learners that would adequately evaluate how well the kids are doing in these programs. So we resort to what we -- what is existent and what has been used with English learners, the SAT 9.

And so we have tracked how well LEP -- the LEP category is doing in the SAT 9. And it has been -- there is really data over a three-year period now. The first of that three-year period was prior to Proposition 227, and then we've had last spring -- two springs ago and last spring's data.

And, essentially, what the press has picked up on are quite selective instances of school districts, Oceanside being one of them, and that one being very prominent because the superintendent has spoken quite publicly about this, and had been an advocate of bilingual education, and so forth.

What we did was we looked at a random sample of school districts other than Oceanside, also looked at school districts that don't have limited

English proficient students, but performed very poorly on the SAT 9 in the first year.

And what we concluded from the data was that what we're looking at is, number one, an overall phenomenon of school districts rising, because it's -- it really is, you know, the first -- first few years of a testing policy you will get increases because everyone -- the first year the schools don't believe that it's going to have any consequence, and so forth, and that it will eventually go away.

And then, eventually, they take it a little more seriously, and the scores do go up. But, basically, what you can document are that the score increases are happening across the board regardless of the kinds of programs that are being implemented. And, certainly, within that you can find a school that has shifted from bilingual to English only and went up.

Well, what that report doesn't show is that there are also school districts that retained their bilingual programs and went up. You also can show that these are, you know, what statisticians have

called regression to the mean effect. So that if you start out low you're more likely to rise than if you are at -- closer to the mean.

So we showed that school districts that have large -- 97 percent English only -- or native English speaking students who performed poorly that first year, showed much bigger rises than those that had higher scores to begin with.

Oceanside -- I believe that their average score was at the ninth percentile. This is the mean score of students at the ninth percentile. That means that you're really talking about students way at the bottom. It has nowhere to go but up. And so that really pretty much explains it, but that's also in light of extremely inadequate data to track them.

CHAIRPERSON BERRY: So is your answer, in all that you said, just so I'm clear that I understood it, that scores went up in schools that had bilingual education still, and schools that did not, and it had to do with something you call the "test effect," you think.

But, basically, what you're telling us,

you don't think the research has been done long enough and consistently enough to conclusively prove anything yet. Is that basically it?

DR. HAKUTA: It's pretty hard. And I'm not sure that the research is easy to do, too. Because the way -- think about it this way. There is -- you're looking at data that report kids who are limited English proficient from year to year, which also means that kids who are no longer limited English proficient -- that is, students are reclassified from being limited English proficient to fluent proficient -- and then they are no longer counted in that statistic.

And so, then, states -- you know, and Proposition 227 had an effect not just on the programs but also on sort of the eagerness of districts to redesignate. We don't know what that effect is, and so, you know, if you think -- to put it crassly, you know, if you -- you know, one way to think about hospitals is that they are a terrible place to be because everyone is sick.

And yet but that's -- the reason why

you're in that category is because of the conditions that lead you to be classified as such to begin with. And so depending on how that -- you know, the redesignation is happening, that also affects the statistics. The data are not -- in that sense, the data aren't longitudinal. They don't take a group of kids and follow them over a period of years and see how -- you know, how they're doing.

CHAIRPERSON BERRY: Commissioner Redenbaugh?

COMMISSIONER REDENBAUGH: Something that you said earlier about success is closely correlated with consistency, is it your sense that bilingual education or the alternative -- the success of either of those theories may have more to do with how well implementation occurs -- or what's your sense of the mix between the implementation effect and the theory effect? That is, that even a less good theory but well applied by diligent practitioners would produce better results and a better theory haphazardly applied.

Obviously, I'm sure you couldn't have any

data on this. But do you have a sense of -- what are the real issues here? Is it really an issue between theory A and theory B, or is there some larger issue?

DR. HAKUTA: I think if I -- if I -- I actually think both of them are important. But I do think that as a practical matter that the implementation of the -- the good implementation -- I don't know. I can't think to that -- the serious implementation, really doing it over a period of time, with resources, is the one that I would really focus on.

The reality is that there are -- we're talking about high poverty schools, by and large. High poverty schools have a hard time maintaining consistency over time.

COMMISSIONER REDENBAUGH: With anything.

DR. HAKUTA: Yes. So, and David -- actually, I defer to him because he has really done more work in this area than I have.

DR. RAMIREZ: Most of the schools that have impact with limited English proficient students, I find minimally half the staff are not fully

credentialed teachers. They're all on emergency credential.

I just came from one school, and 80 percent of the faculty are on emergency credential, which means we can't even start talking about even trying to provide a quality program. They're just still trying to figure out how to get the classroom organized to get them in and sit them -- to be seated. That's the reality that most of these schools --

COMMISSIONER REDENBAUGH: Then you can't know what you're measuring.

DR. RAMIREZ: Right. Well, there are two issues. When one talks about looking at the evaluations of students who are in bilingual programs, those evaluations from California, when you take a look at the term "bilingual education" it's kind of like a miss -- it's too broad in the sense that it really doesn't reflect that in a school district like, let's say, L.A. Unified or in Long Beach -- I'm in the bilingual program, and I can have -- I will have all of my instruction in English the entire day, but I'm called a bilingual student.

The reality is in California that over 80 percent of all the students identified as limited English proficient are only receiving English only instruction.

COMMISSIONER REDENBAUGH: 80 percent?

DR. RAMIREZ: 80 percent are getting most of their instruction -- are getting all of their instruction in English. If you look at other states that have even fewer bilingual teachers -- I'm thinking of Kansas, I'm thinking of Nebraska, I'm thinking of the Dakotas, I'm thinking of Utah, I'm thinking of Washington State, Oregon.

Over 90 percent of those children who are called bilingual students are really in English only programs because they don't have bilingual teachers. So when one takes a look at, nationally, the achievement of bilingual students, how poorly they're doing, the reality is most of them are in English only programs. That's all they receive their entire instructional year.

So that the overall achievement they're demonstrating, which is very, very low, really

reflects the output of an English only instructional program. The issues of quality really come up because when you take a look at what -- who those teachers are very few of them have any sort of teacher certification or specialized training to address these language issues.

So you have a regular monolingual English speaking teacher with a regular credential trying to make some sense of their instruction for these children. Those are the bilingual -- that's the typical bilingual student in the United States.

COMMISSIONER REDENBAUGH: So you're not, in that case, and to the extent of that's widespread, you can't be measuring the results of bilingual education.

DR. RAMIREZ: No. I mean, I've been tracking the -- on the survey that I'm doing of these 25 percent of the school districts and from the states, I've been monitoring -- I gathered data from them as to what kinds of -- what was on their menu of services to LEP students. In other words, did they only provide English only alternatives? Did they

provide primary language alternatives?

And depending -- this is before 227 came into being. After 227 when I went back and asked them, "What are you doing now as a result of 227?" we found some districts who provided English only instruction before 227 were still doing it.

We had some English only districts who had added primary language alternatives. We had some districts that had primary language as an option amongst its English only services before 227, and then dropped primary language. So they went to an English only. And we had some bilingual districts who maintained bilingual services.

Then I took a look at their achievement, the change in achievement within there. What I found was pretty much what Dr. Hakuta found -- very little change except for small- to medium-sized districts that had been in English only and had added primary language.

The average achievement of the kids in those districts actually went up by five normal curve equivalents, which is pretty significant given all of

the other -- it's kind of like -- it's kind of a unit of achievement. It's kind of like a percentile but not really.

COMMISSIONER REDENBAUGH: Not quite, okay.

DR. RAMIREZ: It gives you a sense of where you fall in the scale, so they actually move up. So a growth of five normal curve equivalents is -- tends to be pretty statistic significant, and --

CHAIRPERSON BERRY: It sounds like -- excuse me. I didn't mean to interrupt. I just was totally impatient. This is just so interesting. It sounds like Russell's question is really right on, because it sounds like there are all of these myths about this subject, and that I really didn't understand until you answered the question that most of these districts that they're talking about that the kids are in bilingual programs, that they're not really in bilingual programs anyway. So when they say --

COMMISSIONER REDENBAUGH: It's the kids that are bilingual, not the programs.

(Laughter.)

CHAIRPERSON BERRY: Right. They're just saying the kids aren't learning because they're in bilingual programs, and they're not even in a bilingual program. And the reason you gave made very good sense. I hadn't even thought about that, that they don't have teachers who can teach this.

So it sounds like, the way you're explaining it to us, that one of the things the Commission might do is find a way to put in plain English a lot of what you're saying for people who don't really get all the numbers and the SAT 9s and the --

COMMISSIONER REDENBAUGH: You didn't find five normal curve equivalents --

CHAIRPERSON BERRY: Right.

COMMISSIONER REDENBAUGH: -- to be plain English?

CHAIRPERSON BERRY: Right.

(Laughter.)

COMMISSIONER REDENBAUGH: You did previously indicate your language insufficiency.

(Laughter.)

CHAIRPERSON BERRY: So that people can -- you know, we can have clarity about this question. Does anyone else -- yes, Commissioner Lee, you had a question.

COMMISSIONER LEE: Thank you. I think it's really disturbing to hear that the majority of the teachers are not only not bilingual but they're not even prepared to deal with the population that they're dealing with. Because of all the attention on charter schools being a possible alternative to improve overall education, how do you think charter schools will fit in for LEP students? Will they gain? Will they be left behind? Do you know?

DR. RAMIREZ: It will depend on a lot of the characteristics that Dr. Hakuta mentioned. If the staff are trained and are knowledgeable, I mean, they have to have the training, they have to have a well-articulated instructional program, and they implement it appropriately and they're doing the ongoing monitoring of student progress, and all that, they'll do really well.

We have schools who -- that are

essentially two-way bilingual immersion programs where the students are doing -- are performing way above average. I mean, they're talking -- we're talking about in the '60s, '70s in some instances, in terms of normal curve equivalents or percentiles, whatever numbers you want to use. They're in the top quarter of the data.

CHAIRPERSON BERRY: Commissioners, when you speak into your microphone, it's picked up by the television. I just thought I'd tell you.

Commissioner Lee, a followup question?

COMMISSIONER LEE: But for the charter schools, it's up to the schools to accept the students, right? They do set a priority. So if I were a principal, or if I were a special district with a charter school, if I have LEP students applying, why would I accept the student if I have to spend so much more resources?

COMMISSIONER THERNSTROM: Is that factually correct? I mean --

CHAIRPERSON BERRY: Commissioner Thernstrom?

COMMISSIONER THERNSTROM: Yes.

CHAIRPERSON BERRY: Please.

COMMISSIONER THERNSTROM: Okay. I just wanted to know if it's factually correct.

CHAIRPERSON BERRY: I will recognize you after Commissioner Lee, please.

COMMISSIONER THERNSTROM: Thank you. Okay.

CHAIRPERSON BERRY: She has a right to ask a question.

COMMISSIONER THERNSTROM: Yes. I just --

CHAIRPERSON BERRY: Please be in order.

COMMISSIONER LEE: I may be wrong, but that's why I'm asking the question.

CHAIRPERSON BERRY: Could you answer the question?

DR. RAMIREZ: I'm sorry, I lost the question with the discussion.

CHAIRPERSON BERRY: Repeat your question, please.

COMMISSIONER LEE: Isn't it up to the charter school districts to accept students or set

priorities, that they could accept or reject certain students? And if you have an LEP student applying for the school, which would require possibly additional funding to teach the students, what is the likelihood, or what is the incentive for this charter school, board, or whatever, to accept the LEP students?

The bottom line is that the LEP student have equal access to, let's say, an otherwise very competitive charter school.

DR. RAMIREZ: It kind of depends on the charter schools and what their vision is. There are some two-way bilingual immersion programs in California, which in response to Proposition 227, did not want to dismantle the kind of inclusive school that they had developed for limited English proficient students, language minority students, and English only students who are trying to acquire a second language.

They formed their -- they converted their schools into a charter school, so they had a very clear mission that's what they wanted to do. They were seen as -- in a pluralistic society. They wanted to design schools that would help their children to

take their place in the global economy, as well as respond to the diverse needs in their community.

So those are -- there are other schools that don't do that, and you're right, because then -- now you're getting closer like to the concept of vouchers, you know, and where are there options for -- are there real options, for example, in San Francisco?

We found because the parents, particularly with young children, really would like their children to be close to home. So if the charter school might accept you and they're on the other side of San Francisco, what's the likelihood you're going to put your child on a bus for an hour and a half to get there? Probably not very high.

CHAIRPERSON BERRY: Okay. We will -- you can ask this question about charters to the next panel, too, if anyone wants to, since they are supposed to discuss this issue.

We're going to have to end this because it's beyond time, and we need to get on to the next panel. But if you have a brief question -- a brief question --

COMMISSIONER EDLEY: My question is brief. I can't guarantee you the answer will be.

(Laughter.)

CHAIRPERSON BERRY: Mr. Edley, a brief question. A brief answer.

COMMISSIONER EDLEY: If my goal in a state system or in education reform, my dual goal here, is rapid acquisition of English proficiency, and progress in closing the achievement gap for English language learners, what kind of accountability structure do you think would advance those goals and be consistent with sound professional assessment practice?

DR. HAKUTA: May I take a crack at that? I think one is -- reinforces what David said, which is to -- the recommendation to develop standards at the state level for English language development, and then to develop appropriate tests to go along with that, and have that be part of the accountability system.

The other would be to -- to make sure that students are -- are held to the same standards in the content areas, the academic content areas outside of English language development, so in reading, math, and

so forth, as all students, but that there is a period of time, as I said earlier, between four to seven years, when students would -- even when they're taking a test in english not be -- the test really would not be valid.

But I think that as long as there are --

COMMISSIONER EDLEY: Therefore, high stakes would not be appropriate?

DR. HAKUTA: High stakes would not be appropriate. So high stakes cannot be appropriate for those students at that time, and that's the trickiest part because you can say that but whether districts will do that or not is really a worry for me.

But the other is, you know, in the old Title I legislation, the one that's still in force, there is language in there about assessment for students and the language goes something like, "Limited English proficient students shall be assessed, to the extent practicable, in the language and form most likely to yield valid and reliable assessments," which includes native language assessments, accommodations, grade or time, for older

students, access to dictionaries, the kinds of accommodations that are available, for example, to students with disabilities.

And so accommodations would be one. Native language assessment may be another. There are states that do that, New York with the Regents, and so forth. So that would be another strategy. But I think it would be really important, however, in the meanwhile -- during the time when they are not -- if English learners -- native English speakers are being held to high stakes consequences for their tests, there should be something in there that doesn't just leave the students -- the limited English proficient students out of that system.

CHAIRPERSON BERRY: Okay. All right. Well, we want to thank you very much for coming, Dr. Ramirez, and Dr. Hakuta. We have enjoyed this, and we will figure out some way to utilize this information in our further deliberations. Thank you very much.

II. Panel II: Equal Educational Opportunity: Vouchers/Choice, Charters, High Stakes Testing

CHAIRPERSON BERRY: We will call the next

panel -- Professor Orfield, Ms. Odom-Flagg, and Professor Heubert. And I'll wait until you put out the signs. They have name tags.

We want to thank the three of you very much for agreeing to come to help educate us. And this particular panel is to discuss equal educational opportunity, vouchers/choice, charter schools, high stakes testing. And we know you can solve all these problems, and we received papers from you and have read them diligently.

So if you would resist reading your paper or -- I know how it is with academics, and maybe it is with people who are practitioners. If you would simply summarize the points you wish to make, so that we can get on with the questions -- as you can see there were rather penetrating questions -- we would appreciate it.

The first panelist is Professor Orfield, who is a professor of education and social policy at Harvard. He teaches in the Graduate School of Education and the Kennedy School. He is interested in development and implementation of social policy.

School desegregation, implementation of civil rights laws, have been central throughout his career.

He was once a scholar resident years and years ago at the Civil Rights Commission. Dr. Orfield is co-director of the Harvard Project and School Desegregation, director of that, and co-director of the Civil Rights Project, founded in 1996, to commission new research and explore cutting edge issues in civil rights research. He was educated in political science at the University of Chicago.

We have Ms. Flora Odom-Flagg, who is currently the Principal of LaFollette Elementary School in Milwaukee. In her work at the school she helped to create a set of values and beliefs that staff, students, and parents have adopted to make LaFollette a celebrated school.

In 1998, she received a letter of recognition from then Governor Tommy Thompson for outstanding principals who engage in aggressive and innovative educational activities to generate positive growth and quality learning achievement.

She has been -- her work has been widely

celebrated, and she is also one of 12 vice presidents of the AFT, and she is educated in adult education with a master's degree.

Professor Jay Heubert is an Associate Professor of Education at Teachers College, Columbia University, and adjunct Professor of Law at the Columbia Law School. He teaches courses on law and education policy and chairs the School of Law Institute, a national professional education program for educators and lawyers.

He has been Chief Counsel to the Pennsylvania Department of Education, a trial attorney in the Civil Rights Division of the Department of Justice, and a high school English teacher. He also co-directed a Congressionally-mandated study of high stakes testing conducted by the National Academy of Sciences. He is a member of the National Research Council's Standing Committee on Educational Excellence and Testing Equity. He was educated in law and in education at Harvard University.

We will begin with Professor Orfield. Thank you.

DR. ORFIELD: It's a pleasure to be here. Before I start a discussion of the choice issues, I'd just like to add one thing to the previous panel, which is that the Latino children in the country are the most segregated, by both race and poverty, of any major group. And that compounds many of the problems that were discussed on the previous panel, and they are increasingly linguistically isolated as well, as the Urban Institute has recently reported.

The issue of choice really became a major question in American education in the 1960s, and most of the discussion for a long time related to civil rights and desegregation. It was a technique that was used to avoid desegregation in the south. It was a technique that was used to try to create desegregation in central cities, magnet schools, and so forth.

Choice is not the normal process of student assignment in the United States, but it is increasingly important. It has a natural tendency towards inequality and stratification. It also has a possibility of innovation and creativity and opportunity. It also can create a more integrated set

of schools or a more segregated set of schools.

Choice really describes hundreds of different kinds of possible combinations of programs and policies. And this saying that the devil is in the details is never more true than when you're thinking about choice, because depending on which combination of ingredients you put in a choice plan, it can have totally different kinds of consequences.

And they have both consequences for individuals and for systems, because often we think about those who have the opportunity for choice, and we don't think about the results of the schools that don't have those opportunities, or the schools that are kind of left behind -- the non-magnet schools or the non-charter schools.

In the normal process of public education, we assign students to school. The first major exception came with the freedom of choice movement in the 1960s, which was adopted by hundreds of southern school districts as a preferred technique for desegregation. But in that freedom of choice process, I don't know of any white students who chose to go to

black schools in the south. And there were very few schools that were significantly desegregated, partly because of the pressures against choice, and so forth.

And, of course, the Supreme Court by the late 1960s had said it was acceptable as a desegregation policy only in circumstances where it actually worked to produce integration. And it was pretty well abandoned in most of the school districts by the end of the '60s.

It really came back in the middle 1970s when urban districts in the north had to desegregate following the Supreme Court's decision in Keyes, and by that time most of those districts were already heavily minority and changing rapidly. And after the Supreme Court limited the possibility of including the suburbs in the Milliton case, they had to try to figure out what to do in a very difficult circumstance.

And then he chose to use choice as a mechanism on the theory that it would be less intrusive, and that it would produce educational benefit for white parents who chose to go to

interracial schools. So we had many districts that adopted magnet school plans, and, of course, there was major federal money behind those plans. It was during the period of the Emergency School Aid Act.

Following that, we had choice come forward in a different context, in two different contexts. One was as a kind of magnet or a voluntary transfer program without any desegregation provisions. We had had that in the north also previously under the so-called optional attendance areas that were often found to be violations as part of lawsuits against northern school districts, because they often permitted whites to transfer out of interracial neighborhoods into segregated white schools.

That was shown in many school districts as part of the evidence that was used to find them guilty of intentional segregation.

So choice can be in lots of different ways. Beginning in the 1980s, it was kind of divorced from the desegregation context in many cases, both in public school choice and in the voucher movement.

I think if you want to think about what

affects the outcomes of a choice system, we want to think about a variety of characteristics of the kind of choice plan that's being offered. So you'd want to think, is the choice limited or is it unrestricted? Is it within a school district or across school district lines?

Are there desegregation standards, or are there no desegregation standards? Are choices permitted that increase the segregation, or are those forbidden? Is there a particular time limit on when you can choose? What happens to people who don't choose? Who usually are the least educated and most recent arrivals.

Is transportation provided or is not transportation provided? In other words, does the parent have to have the means to get his kid to the choice school? What kind of information on recruitment is available? There is a very systematic relationship between parent education and income and how much information they have. So it's going to be very inequitable unless there's a major effort at information and recruitment.

Is there a provision for all students in the receiving schools? Especially special education students, language minority students. Or is there none? In terms of real choice, that's a vital issue. Is the choice first come, first serve, or is it by lottery or other random process among the people who are interested? That makes a huge social class difference, because the people who find out about these choices and exercise them first are always the most advantaged people.

Are there residential preferences within the choice system? There often are for magnet schools and other kinds of programs. Does the choice -- if we have a choice system that has first come, first serve, for example, those people who understand the system and act on time will get the best choices.

Now, if you're starting to think about, what are the characteristics of a choice system that is the most equitable and most beneficial for all students, I think that it would have these kinds of characteristics. There would be a broad choice. They would not be limited to school district lines.

There would be desegregation standards. There would be transportation. There would be major recruitment and information outreach, and it would be in all the languages of the families in the community. There would be a random process of choosing from those people who are interested.

There would not be screening devices, which is another element. Many choice systems have a screener on the side of the receiving school, in terms of an interview or a test score or an audition, or whatever.

The worst kind of choice system would have no information, no systematic information, no outreach, no transportation, no curriculum for students with special needs, no desegregation standards. It would be done on a first come, first serve, basis. And there would be no provision for handicapped children, language minorities, and so forth.

These two extreme types of choice really define the difference between magnet schools under desegregation plans and charter and voucher schools,

which normally have none of the equity provisions that I'm talking about.

And I think that they raise very serious questions about the kind of choice we're moving to, because we have not expanded magnet schools, and we are expanding charter schools very, very rapidly. And they are not subject in most places to any of these requirements in a systematic way.

We've had a big increase in the charter school budget and kind of a freeze on the magnet schools. And, of course, the magnet schools' desegregation requirements are being attacked in federal court and have been outlawed in two cases here in the greater Washington area and in Boston Latin School and in a variety of other places -- other places they've been upheld.

We don't have very much information on educational effects of any of these kinds of choice in a systematic way, in part because it's very difficult to get that information, because there is a selection bias in all choice programs.

In other words, the people who are not

choosers are not the same as the people who are choosers. And whether -- even if there's a statistical control on certain -- for instance, there's other unmeasured differences that are probably very important.

So it's very hard to know what the effects of these programs are. I think the best assessment of the magnet school programs is by Adam Gameron at the University of Wisconsin. He shows some net benefits from them. So far we've had a number of studies or charters, most of which show no effects, controlling for the student background. But they're not very good studies.

We've had some extremely controversial studies of vouchers, which, in my judgment, are completely inconclusive at this point. We have other issues to think about when we get to the voucher issue that go beyond the regular choice issue that I think are very important.

Vouchers depend on supply, they depend on the price of the voucher, and they depend on the characteristics of the school and whether the school

is the chooser or the student is the chooser, and whether all of those equity provisions are available or not, and also, of course, the religious dimension, since the great majority of affordable vouchers are religious.

And religious schools in this country report the primary goal as being religion. If you see -- there was a study done by the National Center for Education Statistics where they interviewed the principals of schools across the country in the early 1990s, and all of the major groups of private and parochial schools reported their primary -- their most important goal was religious development.

And I think that to give in a situation where their choice for a better school depends on buying into a religion which might not be your own in a certain way is a very, very complicated question.

My view of it is that we should go to vouchers primarily where we have no options for a student who is confined to an inadequate segregated school, and that that should be the only circumstance under which we should consider them. And then they

should be done with the kind of equity provisions that we're thinking of.

None of the major proposals really do that. But it seems to me our primary goal is -- if you think about vouchers in a systematic way, we have a very large voucher system for higher education in the United States. It's called the Pell Grant. It doesn't work.

A student in the bottom quartile of the income distribution in the United States has only one-tenth the possibility of a student in the top quartile of finishing college. And the gap is widening under the Pell Grant.

Basically, the Pell Grant isn't high enough, it doesn't provide real choice, and the receiving institutions have selectivity on the -- in other words, if the student doesn't have freedom in the market, he doesn't have the real capacity to consume the goods.

And in the politics of financing these vouchers, middle class students have consistently won out. So we've had a massive shift of student aid to

middle class students who would go to college anyway away from poor students who can't go to college because the vouchers aren't set at the right level.

We have similar problems with the Medicaid vouchers. We do not get a supply of good medical care in high poverty areas, even though we're spending a great deal of money on it. So we have to think about those kinds of issues.

We also have to think about systemic effects. If we do have vouchers, what happens to the non-voucher students and the schools who are left behind? Who pays for them? Is there going to be a net increase of money into the education system, or is there going to be a subtraction?

A further issue is raised by Helen Ladd in her big study of New Zealand, which is -- and there's other studies like this in some other countries that have really large voucher systems. Those studies suggest that as vouchers operate social stratification increases in the schools.

In other words, there is not a natural tendency in choice systems towards equilibrium or

towards equity. There's a tendency towards differentiation and selectivity. And in those systems, people who have information, contacts, and understanding, have consistent advantages.

So what I'm saying is choice is a two-edged sword. And it's a very complicated one, and it's a great mistake to oversimplify and lump things together that really can't be lumped together. And everything depends on the conditions of the choice.

And I think by far the most equitable kind of choice we have in this country are magnet schools and desegregation plans. We really ought to look at them very carefully as a primary vehicle for choice. We ought to think of charters, in part, as a way to develop new magnets that would eventually become part of public systems, because charters are inherently unstable -- the ones that are not corporate -- and they have a burnout problem which is very serious.

But some of them are very good, and they should be incorporated in public systems. Some of them are awful. And almost none of them are held accountable. There's almost no serious academic

accountability for charters as opposed to public schools.

Those would be some overview issues.

CHAIRPERSON BERRY: All right.

DR. ORFIELD: I'm sorry that I'm going to have to leave. I told your staff that I'd have to leave at noon. So I can't really stay for questions.

CHAIRPERSON BERRY: You can't? You can't even have a question now?

DR. ORFIELD: I could now, sure.

CHAIRPERSON BERRY: Do the rest of you mind waiting for a minute until we see if there are any questions?

Just hold on and let me see if anyone has any questions for you, Gary.

DR. ORFIELD: Okay.

CHAIRPERSON BERRY: Thank you very much.

I'm sure Commissioner Thernstrom does. Does anybody else have a question?

COMMISSIONER THERNSTROM: Yes. I'd be glad to defer to somebody else.

(Laughter.)

I can talk to Gary anytime.

CHAIRPERSON BERRY: That's what I figured. Does anyone else have a question? Okay. Professor -- Dr. --

COMMISSIONER THERNSTROM: Well, actually, this may surprise you, but I'm in agreement with much of what you have to say in your list of criteria here. I don't agree -- and this won't surprise you -- as much as I like desegregated schools, and I believe in desegregated education, I don't believe in making that a criterion for the following reason.

I look at, for instance, the Kipp Academy in the South Bronx, which has become a charter school that's full, was a regular public school -- and, by the way, I regard charter schools as public schools. You made a distinction. And the Kipp Academy serves only black and Hispanic kids in the South Bronx, largely from the projects. It is, therefore, "segregated education."

On the other hand, it is superb education. And I wouldn't want such schools not to be able to flourish and to be -- for there to be some insistence

that a certain number of seats be set aside for white and Asian students. And I wonder what your reaction to that is.

And then, the second question, it does seem to me there is another way of looking at this. And you say it is normal for students to be assigned to schools in the American system. But that, it seems to me, is not quite correct. That is, we chose, as many other parents do, the schools our students -- our children went to, simply because we had the wherewithal to choose a place of residence.

And, in fact, the majority of American parents in one way or another are choosing their schools. It is only the very low income families who get a computer printout to say, "Your child is going to the following school," whether or not you want your child there, and whether you think that it's a good school.

And it does seem to me -- and I wonder if you can bear with me on this -- that there is a basic question of equity. That what's good enough for me should be good enough for very low income children.

I made choices. They should be able to as well.

CHAIRPERSON BERRY: That's your question.

DR. ORFIELD: I think this is a classic justification for both vouchers and for charters, and what charters and vouchers typically offer is not any of the kinds of choices that you have made. It doesn't offer any access to middle class, significantly integrated schools.

And those are the schools that people who do have the financial power to choose get. That's why I believe in interdistrict public transfer programs of the sort that you are criticizing in Massachusetts.

COMMISSIONER THERNSTROM: Not me.

DR. ORFIELD: In Metco.

COMMISSIONER THERNSTROM: Oh, that's different.

DR. ORFIELD: Well, that is the interdistrict transfer program. But in any case, I do not believe that you get anything like a full range of choices, because there is not transportation, there is not an ability of low income parents to go to charter schools or other schools that are distant from their

families because most of the families can't pay for those costs.

They don't get good information about them. There is not really systematic outreach or recruitment for those schools. And I believe that there are tremendous advantages to being in predominantly middle class and interracial schools, including a number of things that can't be accomplished in a segregated school, such as learning how to function with other groups in the society.

We have powerful evidence developing -- and surveys across the country that this actually happens. There are students of all racial groups in interracial schools. Middle class schools are much better at getting students ready for college. Middle class interracial schools produce much higher levels of college success, and so forth, to minority students.

That's not to say there's not a good school in the South Bronx. There are some good public schools in Dorchester and Roxbury, and other places, but there's just very few and not -- and none of them

offer the kinds of choices that you get by living in the outer suburbs of Boston.

COMMISSIONER THERNSTROM: Well, I agree with you. But on the other hand, the charter schools in Boston are more racially integrated than the regular public schools.

CHAIRPERSON BERRY: Now, so that you don't make this a Massachusetts discussion.

DR. ORFIELD: Yes, right.

CHAIRPERSON BERRY: Since there are other parts of the country, there was an article in the -- and before you go, Gary, in the Washington paper last week about charter schools for D.C. What it pointed out was that the kids who went to charter schools, that parents liked them because they had smaller classes than the regular school, they were more orderly, whatever.

But there was absolutely no evidence that the students were learning anything any more than they were anywhere else, and, said the article, that the curriculum and what the kids were learning compared to what middle class kids were learning in very good

suburban high schools and middle schools was much narrower, by the way, and that the propensity and the likelihood that they would be as well educated to get ready to go to college was not as great.

And then the final thing was -- the touchstone for me has always been look to see what rich people do for their kids. Do they send them to segregated schools? Then, that's what poor people do. That's a good idea. If they think segregation is great for the kids -- people who can afford it, most of the people I know who can afford it don't send their kids to segregated schools, and most of them send them to schools where they have a comprehensive curriculum.

Is that really what you're saying?

DR. ORFIELD: I think that what we want to ideally look for is the kind of choices that middle class families that have actual freedom to choose economically make, and to make those available to low income and minority children in a serious way. That's what a good desegregation plan does. That's what a good magnet school plan does, good interdistrict

transfer plan.

It's not typically what charter schools do, and it's not typically what our voucher experiments have done so far.

Now, I think all of these mechanisms could be made better or less effective, depending on the different criteria that are applied to them. And I would say those would be central issues for people as they think through these choice issues. Really sorting these kinds of questions out for the country would be a tremendous service.

CHAIRPERSON BERRY: And more research is needed.

(Laughter.)

DR. ORFIELD: More research is always needed.

(Laughter.)

CHAIRPERSON BERRY: Thank you very much. We'll let you go --

DR. ORFIELD: Thank you very much.

CHAIRPERSON BERRY: -- and respect your time. And we'll go on to Ms. Odom-Flagg. Thank you

very much, Gary.

MS. ODOM-FLAGG: I just want to say thank you for inviting me, because it's not often that a principal gets invited to speak or share the actual things that are going on in a school, because principals, I think, live it, we speak it, and we sleep it.

My concern is that -- have you noticed, you know, when a school system or a school becomes over 50 percent, 60, 70, or 90 percent people of color, the game plan changes, it suddenly becomes an issue with money, and other things become priority. So to me -- and I do believe that race is at the core of education issues in urban areas. I also believe that an essential element is the unequal funding in schools.

And I say that because I'm saying that from experience. Instead of isolating schools in a district, now we have gone to isolating school districts when they become 90 percent or higher, maybe less, or people of color.

And I give you an example of Milwaukee.

We have certainly changed to neighborhood schools. Now that's another word -- neighborhood schools. What that means to me is this -- is that African-Americans are going to be located in one area, you're going to have Hispanics in another area, and whites in another area. We call them neighborhood schools.

Now, in the urban setting of Milwaukee, there are old buildings, so that means that when you have to make a repair on something that it's going to cost you a lot more than it will other schools. We see that a number of charter schools are asking for money from Milwaukee, and our board members are apt to give that to them, which means that the pot of money is getting smaller. Internet action in urban schools is becoming an issue, because we don't have enough money.

Now the property values in certain areas are going down, so, therefore, white America is beginning to come back into the innercity, which means that they are buying up property at a low price but selling it at a higher price. So what's going to happen to that district? Where are those people going

to go?

So that's one of the reasons -- I think the reason why we're calling them neighborhood schools now.

I do have a concern with charter schools, the accountability factor. I think we're not measured on the same level. We have certain tests that we are recommended that we have to take -- district tests, statewide tests, and, of course, federal tests that our children are under.

Now, if you put that up against middle America, upper crust America, and urban children do not have the experiences that these other children have, then what's going to happen to those test scores? They go down. So, therefore, you are comparing that urban school to some other school that we are not on their equal playing board.

Another concern that I have is special needs children. Now, charter schools can select the children that they want to attend their schools, and I have seen this happen. I have to take all of those special needs children back into my building, even

though I have a charter school down the street, and maybe in the next neighborhood, because they refuse to take those kids. So, then, the burden -- I say burden -- is put on my school with less funding.

We also have to rethink how we hire administrators and qualified teachers. And I understand that people are always talking about, well, teachers have to be qualified. Administrators have to be qualified too because the roles and responsibilities of principals are changing, and they have changed. We have more responsibilities now. We have to be the PR person, we have to be the doctor, the nurse, we have to be the mom and dad, especially an urban principal.

I also think that what the president is saying about leave no child behind is a good thing, if he really means it. And when we talk about leave no child behind, I am talking about all children.

I'm talking about the panel that came on before me and was talking about bilingual children. And I was sitting there thinking, now these are problems that we have in urban America. If we all can

get together and come up as a team with some kind of solutions -- and what those solutions are going to be, I have no idea.

But the problems that he was speaking about, we're having the same problems in urban America, getting qualified teachers who really want to be in that school teaching those most difficult students; students with baggage, a lot of baggage that a lot of people cannot deal with.

So I'm thinking that if the president is talking about professional development for teachers, we should also have professional development for administrators because often times I'm finding that urban America is a little too much for the principal just coming out of college. They need to have some kind of efficacy training, where you know that because these children bring in this baggage, that they're children too, and they need to be loved. And I'm speaking from experience.

I think one of the other panels talk about violence in American with children, and they bring this to school. When we resegregate our districts or

our schools, urban America children do not have enough positive role models. So I think we're resegregating the neighborhoods and calling them neighborhood schools. And what are we doing? We're putting African Americans in this area, Hispanics in another area, whites in another area, and we're just seeing who we are all about. We're not seeing what other race of people are about. And if you don't know what people are about, and you don't understand, then you've got all these stereotypical ideas in your mind of what the other people are all about.

So need some team building. We need children to see what other people are doing.

CHAIRPERSON BERRY: Okay.

MS. ODOM-FLAGG: One other issue. I think that the gap is broadening. Dr. Orfield talked about college-bound students. How can an urban child think about going to college if that person cannot think about finishing high school? Lack of positive role models.

It's all about survival. So we have to do some kind of parent involvement -- professional

development with parents -- insisting that they become more involved in urban schools.

We talked about middle and upper-class parents enrolling their children in schools that they wanted to. Why can't low-income parents do the same thing. And I think it's lack of education. They're in a low-income area because they can't do any better, the majority. In order to better, you must be educated in the ways of other people.

And I think this should be one of the concerns of the president because when we talk about parent involvement, urban parents are thinking about survival and where they're going to get their next meal.

CHAIRPERSON BERRY: Okay. If you could sum up so we can go on. And then we'll have questions.

MS. ODOM-FLAGG: Okay. I think funding must be targeted to compensate for the additional costs and needs of educating most vulnerable children and their parents.

CHAIRPERSON BERRY: All right. Thank you

very much.

MS. ODOM-FLAGG: Thank you.

CHAIRPERSON BERRY: And we'll have some questions in a minute.

Professor Heubert, please?

DR. HEUBERT: Good afternoon. It's a pleasure to be here.

As you know, there's been a national movement in the United States to bring all students to high levels of achievement in education. Accountability is very much the watch word. Accountability can take many forms. Lots of different kinds of people can be accountable.

I'm going to focus chiefly on tests that are high-stakes tests for individual students by virtue of their use in decisions about where individual children will be tracked, whether they will be promoted or retained, whether they will receive or not receive a regular diploma.

A word about the scope of graduation testing in the United States.

As many of you know, we have had

graduation testing in the United States for at least 40 or 50 years. In the late '70s and early '80s, we had what we called minimum competency testing, and between 30 and 40 states required students to pass graduation tests as a condition of getting diplomas whether or not they met all the other requirements for graduation.

As part of the current standards movement, the emphasis has been on assessments that measure higher level standards. At present we have about 20 states that require students to pass graduation tests as a condition of getting a regular high school diploma. And the estimates are that about 13 or 14 of those 20 require students to show mastery at the level of 10th grade or higher. Some are lower, and some, as we'll see in a moment, are higher.

Another development in the context of graduation testing is that federal law in the last five or six years has been modified so that students with disabilities and English language learners, who traditionally were exempted from large-scale state and local assessments, now must be included in those

assessments for purposes of system accountability.

States must include those students in the assessment. States must report the scores of students in these groups in an disaggregated way so that we can see how those groups are doing compared with other students. But there is nothing in federal law that requires states or districts to include students with disabilities or English-language learners at individual high-stakes consequences such as retention or denial of a high school diploma.

It is a difficult policy question whether states should do that, but one initial question is whether states even know they have the choice. I think many states assume that since the federal government says include these kids in the testing that they have to include them in the individual high stakes as well, and that is not the case.

Another point in terms of scope of high-stakes testing, we've had a large growth in recent years in promotion testing. This is largely associated with bipartisan calls for an end to social promotion. As of several months ago, 13

states -- more than twice as many as the year before -- had policies under which students had to pass promotion tests as a condition of being promoted to the next grade, whether or not they met the other requirements for promotion. And there has also been a real growth industry among urban school districts in the United States to adopt promotion-test policies, even where states do not require them. So New York City has one, though New York does not; Boston has one, though Massachusetts does not; Chicago has one, though Illinois does not. And I will say a little bit about why the promotion testing issue is as important, in my view, as the graduation testing question.

Now, what's the impact of these tests? First, the good news.

There is broad agreement among scholars and practitioners that the students most likely to be affected by high-stakes promotion graduation tests are groups of students that have traditionally been low achievers; low SES students, children of color, English-language learners, students with disabilities.

Now, the problem. The challenge is that

there are sharp disagreements over whether the effects will be highly beneficial or extremely harmful. People who are proponents argue -- plausibly I might add -- that it is low-achieving students who traditionally have not had access to high-quality teaching and learning, who have the most to gain by a regime under which we hold all teachers, schools, and school districts to high standards of achievement for all children.

Critics on the other hand point out that for groups that I'm mentioning -- low-achieving students -- are also the students who are least likely to have access to high-quality education right now, and who are, therefore, at much greater risks of failing these assessments without substantial changes in current educational practice.

So what it comes down to, in my view, is whether we are going to use standards and high-stakes tests to leverage improvements in teaching and learning, which would be beneficial; or whether we are simply going to punish children for not knowing what we have never taught them. And if it is the latter,

it will be a catastrophe.

Critical to this is the notion -- and I will get into this a little more, time permitting -- that we make the changes in teaching and curriculum before we attach high stakes for individual children. And the joint standards of the measurement profession -- the High-Stakes Report conducted by the National Academy of Sciences; The American Educational Research Association -- are all in complete agreement that where states and school districts use assessments for individual high-stakes decisions like promotion or graduation, there should be evidence that the tests measure only things that students have had an opportunity to learn. And unfortunately, the evidence is that in many places that is not happening.

Professor Andrew Porter of the University of Wisconsin, who was recently named president of the American Educational Research Association, released preliminary results of a 10-state study last year in which he asked teachers to estimate how much overlap there was between what they teach and what appears in the state standards. And the results he got in this

preliminary study ranged from a high of a 46 percent overlap to a low of a 5 percent overlap. And clearly, if the overlap is very low, then the likelihood is quite high that kids are being tested on things that they haven't been taught. And that, at least in the testing profession, is something everyone agrees is problematic.

Some statistics. Even on basic skills tests, the initial failure rates for children of color are substantially higher than for white students. In Florida 25 years ago, 20 percent of black students were failing a graduation test that 2 percent of white students failed. Over time, those discrepancies got smaller.

In Texas, there were large discrepancies between the scores for African American children and Latino children on the one hand and Anglo children on the other. Texas, to its credit, focused on trying to close the gap, which should be a priority, and according to the data from Texas, succeeded to a large extent in doing that. But even so, in 1998, about 6 percent of white students failed the TASC compared

with about 17 or 18 percent of black students and with Latino students. So there are continuing discrepancies even on basic skills tests.

The same is true for students with disabilities. The leading researchers on this topic at the University of Minnesota have data now on 14 states that includes substantial proportions of students with disabilities in their large-scale assessments, and report their scores in a disaggregated way as federal law requires. And their data show a fairly consistent discrepancy of 35 to 40 percentage points in failure rates. In other words, whatever the failure rate is for nondisabled kids, add 35 or 40, and that's what you have as initial failure rates for students with disabilities.

Now, the hope, of course -- and this is why many people in the disabilities community are placing faith in standards-based reform -- over time IEPs will become much more demanding educationally and that those gaps will close.

CHAIRPERSON BERRY: Individualized education.

DR. HEUBERT: Yes, forgive me.

CHAIRPERSON BERRY: You have about four more minutes, and then we have to start questions.

DR. HEUBERT: Very good.

Several states are raising their standards to what we call world-class standards, which are standards that are associated with the National Assessment of Educational Progress. We know from data on the NAEP that 38 percent of all children nationally would be below basic or would fail such a test, and that the failure rates for students with disabilities, for English-language learners, and for students of color would be nearly twice as high. So the failure rates are quite high.

Well, in the wake of all that, we have some widely accepted principles of appropriate test use. One of them I already mentioned. And that is, you don't attach individual high stakes until you can show that you're actually teaching kids the kinds of knowledge and skills the tests measure.

Another principle of appropriate test use is that we don't engage in educational

practices -- don't use tests -- if the resulting interventions for children are demonstrably ineffective. And the National Academy of Sciences Committee that produced this report concluded that there were two such practices, one of them retention in grade and the other placement in low-track classes, on which the research was so overwhelming that we could say it constituted inappropriate use of tests or other data to put kids in those placements. So these are practices that are clearly inimical to high standards for all.

We could do a lot simply by enforcing these norms of the testing profession. Unfortunately, we don't have any very good enforcement mechanism because the professional associations that promulgate the standards have no enforcement responsibility, and the federal government, which has enforcement powers, has no clear standards of appropriate tests use to enforce.

I would just say one last thing in closing about promotion testing.

The single, strongest predictor of who

will drop out of school is who is retained in grade. It is a stronger predictor of who will drop out than race, than SES -- socioeconomic status -- than parental income, parental education. Therefore, it is reasonable to assume that the proliferation of promotion-test policies in the United States, which are producing large numbers of students being retained, will increase substantially the number of students -- and this is happening mostly in urban areas where children of color, English-language learners, will be most affected -- who will be more likely to drop out, and therefore, unlikely to be able to take advantage of all of the educational and employment opportunities that are associated with receiving a traditional high school diploma.

And people think, well, people can always take the GED. There is now pretty good evidence that GED holders are more like high school drop-outs than they are like holders of regular high school diplomas in terms of their opportunities for further education and employment. Thank you.

CHAIRPERSON BERRY: Thank you very much,

Professor Heubert.

Commissioner Redenbaugh?

COMMISSIONER REDENBAUGH: Yes. It would seem to me that, of course, promotions or non-promotions would go up if you went to promotion testing. Right?

DR. HEUBERT: Yes.

COMMISSIONER REDENBAUGH: Is there any evidence that you find acceptable or serious that subsequent educational achievement is increased or decreased on average? That is, knowing that they're going to be tested, does that change the behaviors of students?

DR. HEUBERT: We know what happens academically to students who are retained. And the consequences there are all negative.

COMMISSIONER REDENBAUGH: I understand.

DR. HEUBERT: The question you're asking me, as I understand it, is do we know that it increases motivation for other kids so that there are, perhaps, gains that offset the harms for kids who are actually retained?

COMMISSIONER REDENBAUGH: Yes. I know my kids study a lot before tests and never after.

MS. ODOM-FLAGG: Can I comment on that?

Okay. What we're finding is that when education is priority in a home, that, yes, the behavior does change. But when education is not the priority in a home --

COMMISSIONER REDENBAUGH: It doesn't.

MS. ODOM-FLAGG: -- then it doesn't.

CHAIRPERSON BERRY: So no matter what you do.

MS. ODOM-FLAGG: No matter what we do. Even in an elementary school we have given kids incentives, we've had family meetings and all of that. And we've noticed that when education is a priority, then that child will do well on the tests.

CHAIRPERSON BERRY: Dr. Heubert?

He was trying to say something about --

DR. HEUBERT: There is not very good research on the question of whether the kids who are not retained benefit from the promotion policy. A study that I supervised several years ago suggested,

though, that comparing kids who were subject to eighth grade promotion tests with kids who are not, the kids who passed the eighth grade promotion tests showed less gain between eighth grade and 10th grade than did students who were not subject to promotion tests at all.

COMMISSIONER REDENBAUGH: Holding everything else?

DR. HEUBERT: Holding everything we could constant, yes. But that's preliminary.

We don't have very good research on whether there are positive consequences to offset the clear negative ones.

CHAIRPERSON BERRY: Was it a follow-up?

COMMISSIONER REDENBAUGH: Yes.

CHAIRPERSON BERRY: Go ahead.

COMMISSIONER REDENBAUGH: Adjacent actually.

CHAIRPERSON BERRY: Go ahead.

COMMISSIONER REDENBAUGH: With tests like the SAT, when you test children that are disabled, how do you know what you're getting? I mean, how does one

interpret those test scores?

DR. HEUBERT: Well, we can make many accommodations that do not alter what it is that the test measures.

COMMISSIONER REDENBAUGH: But how do you know if you haven't accommodated too much or too little?

DR. HEUBERT: Well, it depends what kind of accommodation it is. Certainly, there are some accommodations where there is that problem. A very good example is time. Eighty percent of all accommodations are accommodations of time.

Now, the Individuals with Disabilities Education Act requires us, even if we weren't so inclined, to think of each child as an unique individual. And even conceptually, it's impossible to imagine how we might know ahead of time precisely how much additional time would be sufficient to level the playing field without tilting it in the other direction.

Daniel Koritz in a study in Kentucky showed that children labeled learning disabled

outscored their non-disabled peers on the state assessments, which means either that they were not doing a very good job of identifying kids or that they were overcompensating.

One ultimate solution to that would be to go to tests that are untimed for everybody. And there are other ways in which we can modify tests that don't alter the underlying things we're measuring.

For example, with English-language learners, as the previous panelists said, where we have poor performance on a test that is not the student's primary language, it's hard to know -- impossible -- to what extent poor performance is attributable to lack of English proficiency and to what extent it's attributable to lack of subject matter knowledge. And that matters a great deal.

But we have technology now that would allow us, for example, to give assessments in subjects other than English and language arts themselves that would take the language factor out of it to a substantial degree, so that what we were really measuring was math achievement or knowledge of

history. It's not always easy because reading and reading comprehension are now a part of assessments in most subjects, but it can be done.

CHAIRPERSON BERRY: Commissioner Edley, did you have a question?

COMMISSIONER EDLEY: No.

CHAIRPERSON BERRY: Did you, Commissioner Meek? I saw somebody's hand. I don't know who it was. Because I did have one.

Commissioner Lee did. Yes.

COMMISSIONER LEE: You go ahead first.

CHAIRPERSON BERRY: No, go right ahead.

COMMISSIONER LEE: Thank you.

Since people are placing a lot of emphasis on result of testing by either rewarding the school districts or punishing schools, or low performance, whatever -- and please correct me if I'm wrong, but I heard that because of that, certain school districts are trying to prevent certain students from taking these tests so that they would maintain a certain level.

Is that helpful or hurtful to the

students? Specifically, students with LEP and learning disabilities.

MS. ODOM-FLAGG: You know, I think that it was a money issue because in our state the number of kids that have been tested, it's the money factor there. So just a couple of years ago I think there was a law that stated that we had to test all of our children. At one time we did not test any special ed children.

So now it's the norm that we must, and we cannot test them if it's not written in their IEP, their individual education plan. So now there's a form that we have to fill out where if a child is not tested, we have to state the reason why. But I think it was a money issue there.

CHAIRPERSON BERRY: Go ahead.

DR. HEUBERT: Federal law requires that all such children be included in state and local large-scale assessments. And that's very good because we have never had very good data to compare how well our school serves students with disabilities and English-language learners, and this will give us some

data.

The question of whether we attach individual high stakes for the kids is a more complex issue, and there are arguments on both sides. If we exempt kids with disabilities or English-language learners from the high-stakes consequences, we will encourage kids and teachers to put kids into those categories to escape the high stakes even if they don't belong in those categories. And there's good research on that. But the placement rates go up when kids in those categories are excused.

On the other hand, kids in those categories are among the ones most likely not to have had the opportunity to learn the knowledge and skills that demanding tests measure, and therefore, it is a real dilemma. And my own sense is, we should be focusing much, much more on making sure that English-language learners and students with disabilities have the wide variety of skills. In the case of English-language learners, it includes linguistic skills, an English proficiency; for students with disabilities who start out further

behind and that need individualized attention, to make sure before the high stakes kick in that they've gotten the relative instruction.

MS. ODOM-FLAGG: Thank you for bringing that up because that was an issue in Milwaukee.

We're in a catch-22 I think because schools are graded on the high performance of students. And then on the other hand, we've got students who don't do well. So you have a tendency, as Jay stated, not to want to tests all those types of children. So now it's a law that we have to.

CHAIRPERSON BERRY: Commissioner Thernstrom.

COMMISSIONER THERNSTROM: Dr. Heubert, I thought your paper, by the way, was excellent, and just a kind of prior note, our tests in Massachusetts are untimed for all students.

Wouldn't you say, however, that it's really too early to say what the intended and unintended benefits or drawbacks of high-stakes testing are going to be? I mean, the question as you rightly put it is, are these tests going to drive

better instruction or are they going to end up being punitive. And as you know, in Massachusetts we have, particularly, the most extraordinary number of students failing the 10th grade math and, indeed, for black and Hispanic students we're up to 80 percent. The test doesn't yet count.

Now, I have to say that no state is going to allow -- including Massachusetts -- an exit exam in which you've got massive numbers of kids failing like that. So yes, the numbers don't change. Massachusetts will back down just as almost every other state has. In fact, I think we may be the last hold-out here.

The question it seems to me -- the central question -- is, does the educational change comes first or do you count on lead? Do you hope that the tests are going to drive performance?

And for those of us who are in favor of high-stakes testing -- and I am one of them, although, again, I will not allow massive failures -- what we're looking at is a picture in which for a long time there have been a lot of dollars and a lot of supposed

reforms -- you know, various programs with a name "reform" attached to them -- and flat scores. And of course, on the NAEP data specifically since 1988, you have had a widening racial gap.

CHAIRPERSON BERRY: National Assessment of Educational Progress.

COMMISSIONER THERNSTROM: National Assessment of Educational Progress. You have a widening, and therefore very alarming, racial gap. So that these reforms haven't exactly been doing the job that they should.

CHAIRPERSON BERRY: You need to ask the question.

COMMISSIONER THERNSTROM: So the question is, isn't it early to say whether these high-stakes tests are a good or bad idea? Two, aren't we in kind of desperate shape in terms of the way the American educational picture looks like and a real need for reform?

In your paper you argued for multiple indicators for graduation instead of the single test, but none of the indicators -- portfolios -- all of

them have tremendous down sides.

Isn't this an experiment at least worth pursuing with the caveat that no state will allow massive numbers of students to be deprived of a high school diploma? State will be put off, whatever, the tests modified, whatever, because it's politically not going to happen and morally shouldn't happen.

DR. HEUBERT: You raise many questions.

The premise is, we need to keep everybody's feet to the fire in order to improve teaching and learning. And the high-stakes tests are the principal way in which we do this. I'm not unsympathetic to that.

At the same time, I think there are some practices in high-stakes testing that we know we should not be doing. For example, the evidence is now so overwhelming on the relationship between retention in grade and high school drop-out, but we should not be doing promotion testing. And the National Research Council, which is not a radical bunch, reached that conclusion. There's overwhelming research.

As far as graduation testing, the question

is, are we prepared to punish kids for not knowing what we haven't taught them. And you say, well, we're not going to punish them because when push comes to shove, we're going to change all that. But the whole premise of the keeping our feet to the fire is that we're not going to back down when push comes to shove.

So if we all agree that we're going to say kids will be denied these diplomas, but in reality when it comes to it, they won't be, I'm not sure what we have left.

COMMISSIONER THERNSTROM: Though it depends on how many.

CHAIRPERSON BERRY: I'm going to have to, in the interest of time, permit someone else to ask a question.

COMMISSIONER THERNSTROM: Absolutely.

CHAIRPERSON BERRY: Commissioner Edley, could you ask your question?

COMMISSIONER EDLEY: Here's my question.

Ms. Odom-Flagg, do you feel that for an assessment to be useful to educators -- teachers -- and useful for purposes of

holding districts and states accountable, the assessment must have high-stakes consequences for the children attached to it?

MS. ODOM-FLAGG: That question has a lot of --

COMMISSIONER EDLEY: I'm only allowed to ask four questions.

MS. ODOM-FLAGG: I think that we all should be held accountable, but I do see us in being held accountable that we should all have the same playing field. I do think that there should be some testing, but as we've all stated, we don't all have the same playing field because I deal with poverty-stricken children. For the last 10 years I've done that.

And I stated before, if education is not a priority in their homes, that child's not going to do well, if somebody's not there helping that child along the way.

I do agree, though, that we should have some testing. A standard test for everybody, I don't see that, if I'm answering your question.

CHAIRPERSON BERRY: Did she answer your question?

COMMISSIONER EDLEY: Yes.

MS. ODOM-FLAGG: Did I answer your question?

COMMISSIONER EDLEY: Yes.

MS. ODOM-FLAGG: See, there's a lot of variables that are going through my mind. Children who have to live in an area where they have to sleep on the floor because they hear bullets at night, you know what I'm saying? Or somebody running into your school -- and I've had this to happen -- where somebody broke into the house and killed father, but the only safe haven that they could see was the school.

So when we're saying high-stakes testing for all children, I mean, I can see that, but there are variables out there that will prevent some kids from really passing those tests and being held up, which is no fault of their own.

COMMISSIONER EDLEY: Thank you.

Madam Chair, the education reform

legislation pending on the Hill is going to be debated on the Senate floor i the next couple of weeks. And I would like to figure out a way for us to make some at least preliminary summary statement. And in that connection, I just want to read a paragraph and ask Professor Heubert's reaction to it, since he is a legal scholar as well as an expert on these testing matters.

Accountability systems should use tests to impose high-stakes consequences for students only in a manner consistent with generally recognized national standards. Law should be clarified to remove any uncertainty regarding the applicability of civil rights statutes. And specifically, testing practices that have a discriminatory impact cannot be justified as educationally necessary or appropriate if the violate professional psychometric and assessment standards.

Give me your reactions to that.

DR. HEUBERT: I think it would be a strong, positive statement, and a significant improvement over where we are now.

COMMISSIONER EDLEY: Thank you.

CHAIRPERSON BERRY: Thank you.

I would like to say that the Commission is unlikely to issue any statement about anything until we know more about the subject. In particular, we would need the Office of General Counsel to analyze the legal consequences of what we've just said in terms of opening up the civil rights statutes to this discussion.

Secondly, I think this discussion that we've had here today indicates -- I'm not talking about what my personal views are. I've been dealing with education since I ran federal programs in the federal government and the Carter administration, and many of these programs that we're talking about today were those that were under my general supervision.

But I think that we need to, first of all, reinterpret some of this research so that ordinary people can understand what we're talking about here. That would be a major contribution the Commission should make. And then we should ask the staff to look at the legal implications of what you have just

stated, and then we can meet some conclusion about whether we want to do that and do it in short order.

The other thing that I will say is this has been a very illuminating discussion from both panels. We have not discussed such issues as does it make sense to teach to the test because there are allegations that that is what people are doing in many places around the country in the effort to have their school celebrated for high-passing grades or something. And what that, in fact means, is if anyone is learning anything worth learning.

We have issues of accountability of charter schools, choice schools; that accountability that is required of public schools does not seem to be required elsewhere. And we have your very good questions about the commitment of school systems and states to making sure the children have a level playing field and an equal opportunity to learn.

For years we know that in this country, black and Latino children especially, and some groups of Asian Americans and Native Americans, have not had an equal opportunity to learn; that poor children,

whatever color they were, in many cases have not, and today they do not.

And America, in my opinion -- this is just my personal opinion -- has such a love affair going on with the idea of tests -- some kind of test is going to solve every problem, whether it's a standardized test for this or this test for that, instead of grappling with these very serious issues of education. And all the researchers can tell you how to teach kids, what would be good for them. There's no great mystery; it's not rocket science.

What we do is layer on top of everything the idea of a test. It's like some magical potion, some alchemy that somehow is going to magically elicit commitment, and elicit responses, and change social conditions, and do all of these wonderful things.

So I think that all of these issues are important. I'm glad that you were willing to come today. And we will pursue them in greater detail, and hopefully we can be in a position to say something about them, although we're not ready to say anything about them at this point.

Thank you very much, and thank you members of the Commission.

If there is no objection, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 1:03 p.m.)