NO CHILD LEFT BEHIND: DISAGGREGATING STUDENT ACHIEVEMENT BY SUBGROUPS TO ENSURE ALL STUDENTS ARE LEARNING

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

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NO CHILD LEFT BEHIND: DISAGGREGATING STUDENT ACHIEVEMENT BY SUBGROUPS TO ENSURE ALL STUDENTS ARE LEARNING

Tuesday, June 13, 2006
U.S. House of Representatives
Committee on Education and the Workforce
Washington, DC

The committee met, pursuant to call, at 10:30a.m., in room 2175, Rayburn House Office Building, Hon. Howard P. "Buck" McKeon [chairman of the committee] presiding.

Present: Representatives McKeon, Petri, Castle, Johnson, Ehlers, Biggert, Platts, Osborne, Wilson, Porter, Kline, Marchant, Price, Boustany, Foxx, Kuhl, Miller, Kildee, Andrews, Scott, Woolsey, McCarthy, Kucinich, Holt, Davis of California, McCollum, Davis of Illinois, Grijalva, Van Hollen, and Bishop.

Staff Present: Amanda Farris, Professional Staff Member; Ray Grangoff, Legislative Assistant; Jessica Gross, Press Assistant; Richard Hoar, Professional Staff Member; Lindsey Mask, Press Secretary; Deborah L. Emerson Samantar, Committee Clerk/Intern Coordinator; Toyin Alli, Minority Staff Assistant; Alice Cain, Minority Legislative Associate/Education; Lauren Gibbs, Minority Legislative Associate/Education; Lloyd Horwich, Minority Legislative Associate/Education; Tom Kiley, Minority Communications Director; Joe Novotny, Minority Legislative Assistant/Education; and Mark Zuckerman, Minority Staff Director/General Counsel.

Chairman MCKEON. The quorum being present, the Committee on Education and Workforce will come to order. We are holding this hearing today to hear testimony on, No Child Left Behind: Disaggregating Student Achievement by Subgroups to Ensure All Students Are Learning.

With that, I ask unanimous consent for the hearing record to remain open for 14 days to allow members' statements and other extraneous material referenced during the hearing to be submitted into the official hearing record. Without objection, so ordered.

Good morning. I would like to thank my colleagues for joining me here today for the second in our series of hearings on the No Child Left Behind Act. I extend a special note of gratitude to our Committee's senior Democrat, Mr. Miller, and the Education Reform Subcommittee's Chairman, Mr. Castle, for joining us and helping to spearhead this important series of hearings. I think all of us can agree that these hearings will be a tremendous asset as we approach next year's reauthorization of this act.

Today's hearing will address concerns that the test scores of some disadvantaged and minority students are not being disaggregated in school and district adequate yearly progress calculations under the No Child Left Behind Act. Breaking down student achievement data by subgroups, such as African-American students, special education students, and limited English proficient students, is required by No Child Left Behind to ensure that academic progress is being made overall and within key subgroups.

No Child Left Behind also requires that disaggregated subgroup data must be statistically significant and must not allow students to be included—must not allow students to be individually identified. These provisions were included in the law because Congress wanted to ensure that schools and districts were not unfairly identified based on the performance of a very small number of students. We also wanted to ensure that the privacy of all students was protected.

While I understand that this is a complex issue, I am concerned that States are being allowed to establish minimum subgroup sizes that are too large and are thereby failing to disaggregate data for too many students. For instance, one Associated Press article cited that as many as 1.9 million students' test scores—that is one out of every 14 scores—are not being disaggregated among accountability subgroups, and this certainly was not the intent of Congress when we passed No Child Left Behind in 2001.

My question is one I am sure I share with many of my Committee colleagues: How do we ensure that the maximum number of students have their scores disaggregated while still ensuring that schools and districts that are truly in need of additional assistance are identified as not making adequate yearly progress? My colleagues on both sides of this Committee have joined me in writing to Secretary Spellings to share our concerns, and I am eager to hear from Deputy Secretary Simon as to what steps the Department is taking to ensure this issue will be addressed fairly and effectively.

I am also eager to learn more about how the disaggregation of student performance under No Child Left Behind is helping to ensure that students are learning. The ultimate goal of No Child Left Behind is, of course, to leave no child behind. To allow anything shy of that would be a huge disservice to students, parents, taxpayers and eventually our future. This is a good law worthy of our continued support as well as our continued scrutiny. And I am looking forward to this hearing and the remaining hearings in this series.

With that, I now yield to my friend, Mr. Miller, for his opening statement.

[The prepared statement of Chairman McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Chairman, Committee on Education and the Workforce

Good morning. I'd like to thank my colleagues for joining me here today for the second in our series of hearings on the No Child Left Behind Act. I extend a special note of gratitude to our Committee's senior Democrat, Mr. Miller, and the Education Reform Subcommittee's Chairman, Mr. Castle, for joining us and helping to spearhead this important series of hearings. I think all of us can agree that these hearings will be a tremendous asset as we approach next year's reauthorization of the act.

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My question is one I am sure I share with many of my Committee colleagues: how do we ensure that the maximum number of students have their scores disaggregated, while still ensuring that schools and districts that are truly in need of additional assistance are identified as not making adequate yearly progress?

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The ultimate goal of No Child Left Behind is—of course—to leave no child left behind. To allow anything shy of that, would be a huge disservice to students, parents, taxpayers, and—eventually—our future. This is a good law, worthy of our continued support, as well as our continued scrutiny. And I am looking forward to this hearing and the remaining hearings in this series. With that, I now yield to my friend, Mr. Miller for his opening statement.

Mr. MILLER. Thank you, Mr. Chairman, and thank you very much for calling this hearing to discuss a very troubling problem with the way that No Child Left Behind law is being implemented, one that undermines No Child Left Behind's central promise to provide an equal education to all of America's children.

At its core, NCLB is a civil rights law. By holding schools accountable for the education of all children, the law seeks to close the achievement gap between white students and minority students. That achievement gap, which is really an opportunity gap, has stubbornly persisted for generations. To prove that the achievement gap is closing, the law requires that a State break down annual test results by subgroups, such as income and race. By disaggregating the data in this way, the school's and the school district's overall academic performance cannot obscure the problems, that specific groups of its students are struggling. When poor minority children are not achieving proficiency along with their peers, States must provide remedies targeted to the schools those students attend.

The law's unyielding demands have raised expectations and, in many places, have raised achievement. That is why it is more troubling to learn that some States appear to be circumventing the primary goal of the law and exploiting the legal loophole in order to exclude from accountability the measures of scores of children from racial and ethnic minority groups and with disabilities.

In a recent investigation, the Associated Press found that the test scores of nearly 2 million children were not being counted under the law's required racial categories. The test scores of nearly half of all Native American children in the United States are being excluded from their schools' subgroup data. There are scores of—so are the scores of one-third of all Asian children in the United States, including all 65,000 Asian children who live in the State of Texas, and so are the scores of about 10 percent of black and Hispanic children nationwide. Overall, these test scores of black, Hispanic, Asian and Native American children are seven times more likely to be excluded from subgroup data than are the test scores of white children.

It is wrong for States to exclude these children's scores, and it is wrong for the Department of Education to allow this practice. This practice undermines No Child Left Behind as a force for the advancement of civil rights and educational achievement. No Child Left Behind's philosophical roots go back to the Supreme Court's 1954 Brown v. Board of Education decision. The reason we needed No Child Left Behind in the first place was that, five decades after the Brown decision, our country still fails to offer poor minority children the same educational opportunities as their peers. Poor minority children are still more often assigned to less challenging classes with less qualified teachers than are higher-income and white students. This opportunity gap or the lack of access to an equal education affects academic achievement; 74 percent of white fourth graders read well, nearly twice the rate of black fourth graders. Latino and Native American fourth graders fair only slightly better. More than half a century after the Nation committed itself to education equality, fewer than half of all minority children can read proficiently. It was this two-class educational system that No Child Left Behind was intended to put an end to once and for all. And I am looking forward to hearing the testimony of Deputy Secretary Simon. In April—I want to put on the record that, in April, after the Associated Press's investigation was published, 15 Committee members wrote to Secretary Spellings and asked for the Department's immediate attention to this issue. Unfortunately, we are still waiting that response, and I hope that we will receive part of that response this morning. I look forward to hearing from all of the witnesses what can be done through implementation and enforcement of this provision to ensure the true meaning of the spirit of No Child Left Behind is, in fact, honored, and children are given the opportunity to become proficient in their education. Thank you again, Mr. Chairman, for convening this most important hearing.

[The prepared statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Ranking Minority Member, Committee on Education and the Workforce

Mr. Chairman, I want to thank you for calling this hearing today to discuss a very troubling problem with the way the No Child Left Behind law has been implemented—one that undermines No Child Left Behind's central promise to provide an equal education for all American children.

At its core, No Child Left Behind is a civil rights law. By holding schools accountable for the education of all children, the law seeks to close the academic achievement gap between white students and minority students. That achievement gap—which is really an opportunity gap—has stubbornly persisted for generations.

To prove that the achievement gap is closing, the law requires the states to break down annual test results by subgroups, such as income and race. By disaggregating the data in this way, a school or school district's overall academic performance cannot obscure problems if specific groups of its students are struggling.

When poor and minority children are not achieving proficiency along with their peers, states must provide remedies targeted to the schools those students attend. The law's unyielding demands have raised expectations—and, in many places, achievement.

That is why it is all the more troubling to learn that some states appear to be circumventing the primary goal of the law and exploiting a legal loophole in order to exclude from accountability measures the scores of children from racial and ethnic minority groups and with disabilities.

In a recent investigation, the Associated Press found that the test scores of nearly two million children are not being counted under the law's required racial categories.

The test scores of nearly half of all of the Native American children in the United States are being excluded from their schools' subgroup data. So are the scores of one-third of all Asian children in the U.S.—including all 65,000 Asian children who live in the state of Texas. And so are the scores of about 10 percent of black and Hispanic children nationwide.

Overall, the test scores of black, Hispanic, Asian, and Native American children are seven times more likely to be excluded from subgroup data than are the test scores of white children.

It is wrong for the states to exclude these children's scores, and it is wrong for the Department of Education to allow this practice. This practice undermines No Child Left Behind as a force for the advancement of civil rights.

No Child Left Behind's philosophical roots go back to the Supreme Court's 1954 Brown vs. Board of Education decision. The reason we needed No Child Left Behind in the first place was that, five decades after Brown, our country still fails to offer poor and minority children the same educational opportunities as their peers.

Poor and minority children are still much more often assigned to less-challenging classes and less-qualified teachers than are higher-income and white students.

This opportunity gap—or lack of access to an equal education—affects academic achievement: seventy-four percent of white fourth graders read well—nearly twice the rate of black fourth graders. Latino and Native American fourth graders fare only slightly better.

More than half a century after this nation committed itself to educational equality, fewer than half of all minority children can read proficiently. It was this two-class education system that No Child Left Behind was intended to put an end to, once and for all.

I am looking forward to hearing Deputy Secretary Simon's testimony. In April, after the Associated Press investigation was published, 15 committee members wrote to Secretary Spellings and asked for the Department's immediate attention to this issue. Unfortunately, we are still waiting for a response. I hope Deputy Secretary Simon is able to provide one.

I also look forward to hearing from all of our witnesses about what can be done through implementation and enforcement of this provision to ensure that the true meaning and spirit of No Child Left Behind is honored.

Thank you.

Chairman MCKEON. Thank you.

We have a distinguished panel of witnesses here today, and I will begin by welcoming them and introducing them.

First, we will hear from Deputy Secretary Ray Simon who has served in the position of United States Deputy Secretary of Education since May 26, 2005. As Deputy Secretary, he plays a pivotal role in overseeing and managing the development of policies, recommendations and initiatives that help achieve President Bush's education priorities, especially the No Child Left Behind implementation. Deputy Secretary Simon previously served as Assistant Secretary For Elementary and Secondary Education at the U.S. Department of Education. Prior to that he was Chief State School Officer for Arkansas for 6 years. He also served as superintendent of the Conway, Arkansas, School District from 1991 to 1997. He has

been involved in education since 1966 when he began his career as a math teacher at North Little Rock High School.

Then we will hear from Dr. Ronald A. Peiffer who is Deputy State Superintendent for the Maryland State Department of Education. Dr. Peiffer has provided leadership for policy development and communications for the Maryland Department of Education over the past decade. He has served as an educator for more than three decades by working as a teacher and a local school system administrator in Maryland with experience in developing local curriculum and assessment policies. Dr. Peiffer has provided leadership and helped develop policy for various aspects of the State's school accountability system since he joined the State Department in 1987. He also oversees strategic planning, policy development and communication efforts that reach educators, parents, the business community and the public.

Next will be Dr. Cynthia Kuhlman, principal of Centennial Place Elementary School. Dr. Kuhlman has been an educator in the Atlanta Public School System for the past 28 years. During that time, she has had responsibilities in the areas of teaching, supervision and administration across the divisions of instruction, human resource services and finance. She is also a college instructor, a coauthor, a presenter at national conventions and a recipient of numerous awards and fellowships.

Finally, we will hear from Mr. John C. Brittain. Brittain?

Mr. BRITTAIN. Brittain.

Chairman MCKEON. Brittain. The chief counsel and senior deputy director of Lawyers' Committee or Civil Rights Under Law, a position he has held since March of 2005. He has a background of 35 years in the legal profession, in the past 28 years in legal education with a substantial experience in public interest litigation. After several years of private practice specializing in civil rights law, Mr. Brittain joined the faculty—Brittain. Brittain?

Mr. BRITTAIN. Yes, Brittain. Brittain.

Chairman MCKEON. Brittain. My family came from there. I should be able to say it.

Joined the faculty at the University of Connecticut Law School where he specialized in international and domestic human rights. After 20 years of teaching at the University of Connecticut, Mr. Britain joined the faculty at Texas Southern University's Thurgood Marshall School of Law where he also served as dean for several years.

Very distinguished panel. I would like to remind you that, when you begin, you will see a green light. When your time is running out, you will see a yellow light. When your time has run out, you will see a red light.

Secretary Simon.

STATEMENT OF HON. RAYMOND SIMON, DEPUTY SECRETARY OF EDUCATION, U.S. DEPARTMENT OF EDUCATION

Mr. SIMON. Good morning, Chairman McKeon, Congressman Miller and members of the Committee. Thank you for inviting me today to discuss No Child Left Behind and the State accountability systems on which it relies. We start off in agreement. We agree with the chairman that the law has been a positive step forward

for students, teachers, parents and taxpayers. We agree with Congressman Miller that the law is making a difference. I hope my testimony will be useful as you consider its reauthorization. You deserve to know whether the No Child Left Behind Act is working as intended, and I am here to report that it is.

Across the country, test scores in reading and math in the early grades are rising, and the achievement gap is finally beginning to close. Students once left behind, I am pleased to say, are now leading the way, making some of the fastest progress. We know this because No Child Left Behind measures the academic performance of all students through testing, and we know it because the law breaks down these results by students' subgroup, African-American, Hispanic, students with disabilities, the economically disadvantaged, limited English proficient and more.

This disaggregation of data, as it is known, is at the heart of law. It shines a bright light of accountability on all schools, for all parents and taxpayers to see, and it allows teachers to catch students before they fall behind to see where we are today. It is important to know where we came from. Prior to the law's passage, schools were not held accountable for the subgroups, only a handful were disaggregating data for accountability purposes. Reading, language arts and math assessments were only required three times in a student's entire K-12 education, and some States did not participate in a national assessment of educational progress.

All that has changed. Today, parents know more, teachers know more, Congress knows more, and the U.S. Department of Education knows more. Every State and the District of Columbia has a school accountability plan, reading and math assessments and data broken down by subgroup. We are light years ahead of where we were 5 years ago. This data is helpful in determining whether we are making adequate yearly progress toward our primary mission of all students and grade levels in reading and math by 2014. This effort depends on valid and reliable accountability systems that accurately reflect student performance while protecting student privacy.

The No Child Left Behind Act allows space to set a minimum number in defining a student subgroup called the N size. Congress recognized the need to ensure accuracy and avoid distortions when, to quote the law, the number of students in a category is insufficient to yield statistically reliable information. This numerical floor varies from State to State. Most States use an N size of about 30 to 40 students per school. Taken together, about 25 million more students are currently accounted for, a huge increase over pre-NCLB levels.

But the question naturally arises, due to N size alone, are there some students being left behind? The answer is, no, even when, say, only four Hispanic students are enrolled in a school, those students' test scores may, depending on the student, be accounted in a second, third or fourth subgroup, such as limited English proficient or economically disadvantaged, that exceeds the minimum N size. These scores are also counted toward the school district's performance in that subgroup.

Finally, and most importantly, in schools such as Frankford Elementary in Delaware and Centennial Place Elementary, represented by Principal Kuhlman with us today, their scores are re-

viewed individually by teachers. These teachers and those in thousands of schools across the country that have truly adopted the mission of No Child Left Behind use test results to guide instruction and use their individual and collective creativity to focus with laser-like precision to tap the strengths and identify the weaknesses of each child. Thus, the law, with built-in redundancies, partnering with creative teachers enable us to get as close to 100 percent accountability as we possibly can.

It is a delicate balancing act to develop a State accountability system that is both valid and reliable or, to put another way, fair and accurate. That is why we have taken a firm stance against calls to increase N size minimums, approving only one State's request so far this year. We want to ensure children are counted in every possible way. Our goal is to work closely with States to maximize the inclusion of students in all subgroups while maintaining public confidence and accountability.

To this end, the Department is planning to host a National Technical Assistance Conference later this year for State assessment and accountability directors in concert with our assessment and accountability comprehensive center. With full testing under NCLB now underway, we will work with States to acquire new impact data on school and student inclusion rates and discuss with them a process for justifying how their specific N size is necessary for valid and reliable results. In the meantime, we will continue to follow the core principles of No Child Left Behind as we help States leverage the law into approved academic performance.

And I know I speak for the Secretary when I say that we look forward to collaborating with Congress as well. Thank you and I will be happy to answer questions at the appropriate time and also to inform you that the Secretary's response to the letter that Congressman Miller referenced will be coming to you this afternoon.

[The prepared statement of Mr. Simon follows:]

Prepared Statement of Hon. Raymond Simon, Deputy Secretary of Education, U.S. Department of Education

Good morning. Thank you for inviting me here today to discuss the State accountability systems designed for No Child Left Behind and, in particular, our efforts to work with the States to develop valid and reliable methods of measuring achievement and disaggregating achievement data by groups of students.

I want to begin today by saying unequivocally that increasing accountability for students at all levels—in the school, the school district, and the State—is at the core of President Bush's No Child Left Behind reforms. In fact, NCLB was designed to shine a light on those students who have so often been left behind in our Nation's schools: African-American and Hispanic students, students with disabilities, students with limited English proficiency (LEP), and economically disadvantaged students. NCLB requires that these students be tested annually, that their scores be publicly reported, and that schools, districts, and States be held accountable for their academic performance. This is the only way to close achievement gaps between minority students and their peers and ensure that all students read and do math on grade level by 2014.

State accountability plans under NCLB reflect these goals, and use student assessment data in reading and mathematics to determine whether each district and school is making adequate yearly progress (AYP) toward the statutory requirement of 100 percent grade-level proficiency by 2014. A fundamental component of AYP is looking at assessment data disaggregated by various subgroups based on race, ethnicity, poverty, disability, and limited English proficiency. A school makes AYP only if each subgroup—not just the overall student population—meets annual proficiency objectives. Before the passage of NCLB, only two States used disaggregated data to determine school performance under their accountability systems. And while we

share the concern of Members of this Committee about the exclusion of small minority subgroups from AYP decisions, it is worth noting that thanks to NCLB, more than 9 million minority students, or 85 percent of minority students in the tested grades, are now included in school-level accountability determinations.

At the same time, if we want to accelerate the progress of No Child Left Behind—as we must to meet the law's proficiency goals—it is essential to work with States to raise that percentage even higher by maximizing the inclusion of minority student subgroups. This effort will be the focus of my testimony today.

The addition of subgroup accountability to State accountability systems under NCLB represented a major breakthrough for our education system, but the use of disaggregated data to measure AYP brought its own challenges. Many of you are familiar with this issue, but the amount of public misunderstanding is great enough that I'd like to briefly explain the basics.

The Use and Impact of Minimum Group Sizes, or N–Sizes

In holding schools accountable for the performance of various student subgroups, it is important to design State accountability systems that reliably identify schools as not making AYP. Reliability in this case means minimizing the probability of inaccurately identifying a school as missing AYP or in need of improvement. Subgroup accountability complicates this task because the achievement of small groups of students can vary considerably from year to year, even when curricula and instruction are identical, because of sampling error associated with testing different groups of students. Congress recognized this problem when it drafted NCLB, and thus required AYP decisions to include specified subgroups except when "the number of students in a category is insufficient to yield statistically reliable information."

States have responded to this requirement by setting minimum group sizes, or n-sizes, to determine how many students of a particular population must be enrolled in tested grades in a school for the assessment scores of those students, taken together, to be a reliable basis for making judgments about how well that population is performing academically. These minimum n-sizes vary considerably from State to State, and currently range from 5 to 52, with most States using an n-size of 30 or 40 students. In a large State with a diverse population of students, subgroups in most schools may be large enough to permit a larger n-size, while in a smaller State with many rural schools or sparse and homogenous populations, even a small n-size may result in the exclusion of most subgroups from AYP determinations.

It is important to understand that students are included in every group to which they belong. For example, a Hispanic student who is from a low-income family and is an English language learner would be included in four separate subgroups: the "all school," Hispanic, economically disadvantaged, and limited English proficient groups. The potential for counting this student's achievement four separate times for AYP purposes reflects an intended redundancy in NCLB accountability systems that now permits relatively few students to be left behind in our education system. Thus, even if there are too few Hispanics in this student's school to meet the minimum group size for Hispanics, but the number of economically disadvantaged students exceeds the n-size, her assessment scores would be counted in the economically disadvantaged subgroup for accountability purposes.

In addition, if there are not enough students in a particular subgroup at the school level to meet n-size requirements, the scores of these students are aggregated to the district level, where subgroup accountability also is an essential part of AYP determinations. For example, while there may be only a handful of African-American students in individual schools across a district—not enough to permit reliable measurement of school performance—aggregation of these students' scores at the district level will provide a clear picture of the district's performance in educating these students.

Aggregation of subgroup scores to the district level is one way the statute deals with the challenging goal of ensuring both validity and reliability in State accountability systems. A valid system, which provides a complete picture of a school's performance by including all subgroups, requires a very small n-size. On the other hand, a reliable system, which correctly classifies schools as making or missing AYP, requires a very large n-size. Two researchers who looked at this issue, Richard K. Hill and Charles A. DePascale of the National Center for the Improvement of Educational Assessment, concluded that while States should pick a small n-size, say 10 students, to ensure validity, "it would be justifiable for a State to select a minimum N of 300" to ensure reliability.

Education's Decision-Making on N–Size Levels

Clearly, setting n-size limits involves a careful balancing act, given the very wide range of possible options suggested by available research on the subject. As noted

earlier, the Department has approved a range of State approaches, with the most commonly used n-size falling between 30 and 40 students. Many rural States tend to use a smaller n-size to account for their small schools. For example, North Dakota has no minimum subgroup size and Maine has an n-size of 20. Some States, such as California, Georgia, and Washington, combine a flat number and a percentage of a school population as their minimum group sizes.

When approving State requests to modify n-sizes, the Department looks at all the factors involved in AYP determinations, including the average size and diversity of the State's schools. States must provide data on the estimated impact of the proposed change, and the Department examines the effect of the change on the number of schools that still have subgroups included in the AYP calculation. We are taking a hard look at these requests this year. Most requests are for larger minimum n-sizes, but we also are seeing several States move toward greater inclusion by proposing to eliminate higher group sizes for students with disabilities and limited English proficient students.

In fact, as part of our proposed regulations providing greater flexibility to States in measuring accountability for students with disabilities, States will no longer be permitted to establish different group sizes for separate subgroups, including students with disabilities and limited English proficient students. We believe that States now have sufficient flexibility in measuring the achievement of these subgroups that different group sizes are no longer justified.

The Department also is taking a harder line on requests for larger n-sizes this year because these requests generally do not make sense at the current stage of NCLB implementation. States now are testing students in each of grades 3-8, which naturally improves the validity and reliability of decisions about school effectiveness by increasing the number of students tested and thus increasing the number of students in each subgroup. While we continue to review data and take into account the precedent of previous decisions, we increasingly are taking the position that an increase in minimum group size—i.e., including fewer students in subgroup accountability—does not contribute to universal proficiency, nor does it put kids first.

Nevertheless, larger n-sizes may be appropriate in the overall context of a State's accountability system. Last year, for example, the State of Florida requested a change in n-size from 30 students for all schools to a minimum of 30 students or a figure equal to 15 percent of enrollment, with a cap of 100 students. This means that for a school enrolling 400 students, the n-size would be 15 percent of 400, or 60 students. But for a school enrolling 1,000 students, 15 percent would equal 150 students, which exceeds the 100-student cap, so the minimum n-size for that school would be 100.

While 100 sounds very high, it makes sense in the particular context of Florida, and, thus, for several reasons, the Department approved Florida's request. First, with some of the largest and most diverse schools in the Nation, many Florida schools have subgroups larger than 100 students. Second, because Florida bases its subgroup counts on all students in the school, and not just students in the tested grades, more schools have subgroups that meet the 100-student limit than would be the case in other States. And third, Florida does not use any other statistical adjustments to determine AYP.

As a result of these factors, data submitted by Florida showed that the percentage of schools accountable for minority subgroups remained high, and higher than in many States with lower n-sizes. At the same time, these factors specific to Florida suggest that an n-size of 100 would not be appropriate for other States that have a different mix of schools and a different approach to calculating AYP.

Ensuring That Accountability Systems Are Valid and Reliable

We knew, of course, that statistical tools such as minimum group sizes could have the effect of moving accountability from the school to the district level for some minority students, particularly in small schools. We also know that short of instituting an n-size of "one student," there will always be some students who are counted for AYP purposes only in the "all student" subgroup. Nevertheless, last April's Associated Press analysis of minority group exclusion reinforced our determination to more rigorously examine the impact of n-size limitations and do a better job of working with States to ensure the maximum possible inclusion of minority subgroups in school-level accountability decisions.

I have already noted our reluctance to approve requests for larger n-sizes over the past year. This policy reflects a larger shift toward tightening up our oversight of NCLB accountability provisions as we approach full implementation of the law. We are giving greater scrutiny to State requests for changes to their accountability plans, including changes to minimum n-sizes, and we are strengthening our monitoring of public school choice and supplemental educational services options. To give

one example, now that States have expanded assessments to cover all the grades required by NCLB, and thus are testing many more students, it is fair to examine more closely the impact of n-size limitations and other statistical tools on the inclusion of minority students in NCLB accountability determinations. As has been the case since the President signed NCLB into law, our goal is to work with States to maximize the inclusion of students in all subgroups while maintaining or increasing public confidence in State accountability efforts.

In addition, we will be taking steps over the coming months to draw on all available expertise and research to examine how States can improve the validity of their accountability systems through maximizing student inclusion.

As one example of this effort, the Department is planning, in concert with our Assessment and Accountability Comprehensive Center, to host a technical assistance conference later this year to help States improve their systems for ensuring the validity and reliability of their accountability decisions. This conference will provide an opportunity to examine more closely the impact of the wide range of statistical tools used by States on the overall effectiveness of their accountability systems.

I am hopeful that we will be able to draw on the lessons learned from the planned conference, as well as other related activities, to provide technical assistance to this Committee as it prepares to reauthorize the Elementary and Secondary Education Act of 1965. I expect the Committee will face many of the same challenges during reauthorization that the Department and the States have faced in finding the right balance of flexibility and accountability consistent with the core principles of No Child Left Behind, and I know I speak for the Secretary when I say that we look forward to working with you on this task.

Thank you, and I will be happy to answer any questions.

Chairman MCKEON. This afternoon did you say? We will get the letter this afternoon?

Mr. SIMON. Yes.

Chairman MCKEON. Thank you very much. That is great.

Dr. Peiffer.

STATEMENT OF RONALD A. PEIFFER, DEPUTY STATE SUPERINTENDENT, MARYLAND STATE DEPARTMENT OF EDUCATION

Mr. PEIFFER. Good morning, Mr. Chairman, Congressman Miller, and members of the Committee. I appreciate the opportunity to be here representing Maryland in this very important discussion.

Disaggregation of data is something that has been very important in Maryland's accountability system well before No Child Left Behind. In 1989, we had a Governor's commission that began an accountability system called Maryland School Performance Program. And by 1993, we were reporting on a regular basis the disaggregation by race, subgroup, special services subgroups and so on, including gender. We have used that information for an accountability system as we identified low-performing schools beginning in 1994. And we have consistently done that.

However, under our old accountability system, we generally looked at schools on the average. We looked at the average performance, and we reported the disaggregated data, and we used the disaggregated data to inform the decision about low-performing schools when we had to intervene. However, when No Child Left Behind came along, we were at a point where we needed to transition to something that was more focused and more surgical. And as a consequence, we moved with a Committee of about 200 Marylanders that we brought in, using national experts, to look at how we might do that, and we have developed what we think is a very good system.

Our accountability system is based on the same categories that are provided in the Federal law. However, our N size, our minimum group size, if you will, is five. And we believe ours is probably the smallest in the country. And what that does is it provides, when you report, you ensure that every student appears that will not be—will not be capable of being identified. This is a statistical tool—a statistical measure I guess that has been in place for a number of years. It is not really a new measure, No. 5. However, in the area of accountability, it becomes a little more complicated because you need to make sure, as Secretary Simon said, you need to make sure that the number is statistically reliable and does not reveal students' names and identities. So we have used a statistical tool called the confidence interval, which is not unlike the plus or minus five points that you see recorded about poll results. And the size of the margin of error, if you will, around the results has a lot to do with the size of the group. A small group gets a large margin of error. A large group gets a small margin of error. As a consequence, by applying that to progress measures, determination for schools around the country, right now in the 2005 Education Week, I think you will find that Maryland had an AYP, about 75 percent of our schools making AYP. That is about the national average.

By moving to an N-5, it did not unfairly disadvantage our schools. What we have also done is to use the disaggregated data as a part of our new funding distribution to local school systems. By knowing the high-risk students you have in school systems, school systems get additional dollars. Then, annually, they have to tell us in the master planning process how they are spending those dollars to ensure that they are targeted toward the students and moving away from the typical multi-funding stream approach to funding local school systems.

Our State dollars combined together with the Federal dollars allow local school systems to be very strategic about the way they are spending their dollars. We believe that this is helping. In Maryland we have had a lot of cooperation from our local school systems, and our schools in working with this had a tremendous amount of cooperation from the U.S. Department of Education in making sure that we could apply this in a good and fair way.

Over the years and in most recent years, we have been able to say that some schools have paid very close attention to the disaggregated data and made significant changes. North Glen Elementary School, for example, in Anne Arundel County was, I believe, recently visited by the President. Their third graders in reading, African-American students, were performing at approximately 32 percent proficiently level. That is up to 93.8 percent in this last test.

We have other schools that are showing similar kinds of gains. We have other schools for which we have a lot of work ahead. We believe it is the right thing to do. We believe No Child Left Behind has really helped us go far beyond what we did that we thought was groundbreaking in the 1990's into an era where I think we are more serving the needs of each and every student.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Peiffer follows:]

Prepared Statement of Ronald A. Peiffer, Ph.D., Deputy State Superintendent, Office of Academic Policy, Maryland State Department of Education

Introduction

Good afternoon Mr. Chairman, Congressman Miller, Congressman Van Hollen, and members of the committee. Thank you for the opportunity to talk with you today about the importance of subgroup disaggregation and the minimum group size of five that Maryland uses in its system of reporting and accountability.

As the Deputy State Superintendent of Academic Policy at the Maryland State Department of Education, I work with the Department staff and local school systems to develop policy in numerous areas, chief among them Maryland's system of school accountability. With State Superintendent Grasmick's strong and able leadership, Maryland incorporated No Child Left Behind (NCLB) into its ongoing accountability system, which has been in place since 1990.

Historical Perspective

For some states, the ideas of school accountability and data-reporting by race or other categories were not common before NCLB. But in Maryland, we have a long history of both that dates back to 1989, when the Governor's Commission on School Performance issued a report calling upon the Maryland State Department of Education to develop a comprehensive public accountability system for schools, systems, and the state. The report issued recommendations based on the egalitarian premise that all children can learn and have the right to attend schools in which they will succeed, no matter where they live. All schools, regardless of the demographic characteristics of their students, were to be held accountable for their students' educational achievement, and all children were to be given a real opportunity to learn equally rigorous content.

This commitment to equal academic opportunities for ALL students became the premise and promise of Maryland's school-reform efforts. In response to the Commission's report, the Maryland State Board of Education established the Maryland School Performance Program, the first step in our action plan for revitalizing public education.

Because we were committed to improving education for every child, we realized that we could not just report average achievement data. Reporting only average performance can mask problems among certain groups of students. The only way to understand whether a school is serving all its students well is to report achievement data by the student subgroups. If a school is performing at a satisfactory level overall but terribly among certain groups of students, then we want to know that, so we can begin addressing the problem.

Thus, since the early 1990s, Maryland has reported its achievement data for all students and for subgroups of students, such as racial groups, students receiving special education services, and students eligible for Free or Reduced-Price meals, which is a proxy for poverty.

Also during this time, Maryland decided upon a minimum group size of five for reporting student results. The minimum group size is admittedly small, but we believe it is essential in ensuring that students are "counted" and don't disappear from the system. We did not report results from groups of less than five to ensure that the individual student identifiers could not be devised from the publicly reported school-level results. This is consistent with generally applied statistical rules. Because Maryland at that time did not tie any sanctions directly to subgroup performance, there were no particular concerns from districts or stakeholders about the minimum subgroup size of five.

Maryland and NCLB

As you know, NCLB not only requires public reporting of subgroup performance, it also requires states to include subgroup performance in their Adequate Yearly Progress calculations, thereby holding schools responsible for improving subgroup achievement. This was a significant change in Maryland, as previously we were reporting for subgroups but not tying it directly to consequences. We were certainly shining a light on achievement gaps, and putting pressure on schools to pay more attention to subgroups, but we hadn't yet taken the next step of issuing sanctions to schools and districts that were not improving achievement for all groups of children.

In 2002, Maryland linked educational funding to subgroups with the Bridge to Excellence Act, which established a new formula for calculating how much money each school system receives from the State. Under the new formula, school systems receive additional funding for all students, plus additional funds based on the num-

bers of students who receive special education services, have limited English proficiency, or qualify for free or reduced-price meals. By 2008, public schools will receive more than 1.3 billion in additional funding.

In order to receive the funding, each of Maryland's 24 school systems is required to prepare a Master Plan for approval by the State Board of Education. This Master Plan must document the school system's goals and strategies for improving achievement among all groups of students, including students receiving special education services, students with limited English proficiency, and students who qualify for free and reduced-price meals, and other groups.

In preparing Maryland's response to NCLB, we had many discussions around minimum group size. As you know, the minimum group size is the size at which a group of students "counts" toward Adequate Yearly Progress. For example, a very high minimum group size, such as 100, would mean that schools would not be accountable for any group smaller than 100 students. In Maryland, such a scenario would ensure schools would never be responsible for anything other than average student performance. The subgroups essentially would disappear from the accountability system.

This was not what we wanted for Maryland. Our chief concern was in identifying a group size that would ensure we were including all students. As I mentioned before, Maryland has a long history of reporting subgroup data. We wanted to continue our push for higher achievement for all groups of students. Therefore, we did not want to pick a group size that was so high that subgroups in hundreds of schools across the state would disappear.

However, it was also important to us that the Adequate Yearly Progress determinations be accurate. We certainly did not want schools to be identified for significant consequences such as restructuring based on the performance of a handful of students if such action was not warranted. We knew that we needed to balance what was fair and appropriate for schools with what was the right thing to do for children.

In the end, we found the balance we were looking for by keeping our minimum group size of five and adding a confidence interval.

Confidence Interval

As you know, in order to be making Adequate Yearly Progress under NCLB, schools and districts must meet the annual targets in reading and math. These annual targets increase each year until all students attain proficiency in 2013-2014.

You are probably familiar with the concept of Confidence Interval as it applies to survey and poll results. The plus or minus margin of error that is cited along with poll results is analogous to our Confidence Interval.

As it applies to NCLB and school accountability, the confidence interval is a range of scores around the annual target. As long as the subgroup scores at the lowest point in the confidence interval range, it will be considered to have met the annual target. For example, if a school's annual reading goal is to have 50% of students at proficient, the confidence interval for a particular subgroup might be from 40% to 60%. As long as the subgroup's score is in the confidence interval range, then the subgroup has achieved the annual goal.

Confidence intervals protect schools from the small margin of error that is inherent in every measurement system. They do this by providing a cushion around the annual target. The size of the cushion varies according to the size of the group. The smaller the group, the larger the interval. The larger the group, the smaller the interval. As long as the group performs within the confidence interval, it will be considered to be meeting the annual target.

Maryland's minimum subgroup size of five is small, but it is at that point that the confidence interval, the cushion if you will, is at its largest. So, even though we are reporting and holding schools accountable for small subgroup sizes, we are giving schools some leeway in achieving the targets.

We instituted the Confidence Interval not just because it was the right thing to do for schools, which it is, but because it is an appropriate thing to do statistically. When assessment groups are small, the performance or absence of just a few students can have a dramatic effect on the average score. The statistical help provided by the Confidence Interval allows us to have a good level of confidence that the decisions made about low-performing schools are fair and accurate.

Conclusion

By applying a Confidence Interval, Maryland has been able to maintain a small minimum group size of five, thus ensuring that subgroups of students are not disappearing from the accountability system. At the same time, we're protecting schools from erroneous identification for sanctions due to subgroup performance.

A few years ago, there was some anxiety on the part of local districts about the consequences of a small minimum group size. However, once implementation began in earnest, the districts saw the value of the small group size. They now appreciate being able to assure parents that students are included in the accountability system and that subgroup performance is not being swept under the rug.

Thank you for the opportunity to discuss Maryland's use of subgroup disaggregation, minimum group size, and Confidence Interval. I look forward to providing any additional information you may need or answering any questions you may have.

Chairman MCKEON. Thank you very much.

Dr. Kuhlman.

STATEMENT OF CYNTHIA KUHLMAN, PH.D., PRINCIPAL, CENTENNIAL PLACE ELEMENTARY SCHOOL

Dr. KUHLMAN. Good morning, Mr. McKeon, Congressman Miller. It is my pleasure this morning to be here to discuss the disaggregation of student achievement by subgroups to ensure that all children are learning.

As principal of Centennial Place Elementary School in Atlanta Public Schools, I have been very proud of our progress in making sure that all children are learning at a very high level of proficiency and that we are closing achievement gaps.

This morning I would like to talk a little bit about background information of our school, some of our interventions and also specific information about student achievement by subgroups. Our school opened in August 1998. It replaced a very low-performing school that had operated for years in that community and was part of an overall community revitalization effort. We have 520 students; 95 percent are African-American; 4 percent other minorities; and 1 percent white. We are a Title I school with 60 percent of our students receiving free or reduced lunch.

Our school serves a wonderful new housing development that was funded by a HOPE VI grant. It replaced a very deplorable housing project, Techwood and Clark Howell Homes in midtown of Atlanta, and it is 40 percent public housing subsidized, 20 percent low income and 40 percent market rate housing. We also serve two shelters for homeless women and children and families, over 120 students a year from these shelters but no more than 30 at a time due to the transience rate. We also serve a little home ownership community near Georgia Tech University, and in addition to that, one-third of our students come to Centennial Place by choice.

We have a number of wonderful businesses in our community that also pay close attention to the progress of the school, the Coca-Cola Company, Sun Trust Bank, Holland & Knight law firm, Georgia Tech University, Georgia State University, with a high level of participation and community involvement.

Some of our interventions: We have school uniforms. That helps us with the management of the wonderful economic diversity that we celebrate. We also have a year-round calendar. We start school in mid-July and end in mid-June and do 9 weeks on, 3 weeks off, with required remedial course work during the break periods for students who aren't meeting standards and wonderful enrichment classes for those that are. We do an extended day program, and we do thematic teaching and project-based learning.

We have a very exciting science-focused curriculum that keeps children actively engaged in learning. We also spend considerable time with other subjects like foreign language. All of our students take Spanish every day. And we have a heavy arts integration with the help of our partners at Georgia Tech, Georgia State, the Robert Ferst Center for the Arts and the Atlanta Symphony Orchestra. Our kids attend interactive week-long workshops with artists such as Chuck Davis. They have gone to the Ferst Center to play Yo-Yo Ma's cello. And I say all this to say that exciting learning in standards-based education is an important variable.

Three years ago, in 2003-2004, we recognized that our two subgroups of black students and economically disadvantaged students were making exactly the level of progress that we expected, 90 percent or better proficiency. We were very disappointed, and thanks to No Child Left Behind reporting data by subgroups, that our students with disabilities were not achieving commensurate to the other students. So we took it upon ourselves to initiate a number of variables, including more collaboration with teachers, more focused modifications in the testing and more professional development for the teachers, to bring up that performance. And we have noticed an increasing closing of the gap that exists with our students who have disabilities. So we are leveling out on all playing fields now.

I want to end with just one nice story about our students who had attended Fowler before we existed, and there was a depressing story that never had a Fowler student attended Georgia Tech University despite the fact that it was right at our back door. Well, this year, I just attended our first graduating group of students; our first fifth graders finished high school this year. And they were represented on the program and on the stage with honor society ribbons, high financial scholarships to colleges, straight As, grade point averages above 90 percent, and next year, we do anticipate our first student graduating from high school and attending Georgia Tech. So we have made a lot of progress, and we are appreciative to No Child Left Behind for the increased rigor that Georgia will implement with its new standards and for the public presentation of disaggregated data by subgroups.

Thank you, and I look forward to answering your questions.

[The prepared statement of Dr. Kuhlman follows:]

Prepared Statement of Cynthia Kuhlman, Ph.D., Principal, Centennial Place Elementary School

Atlanta, GA, June 13, 2006.

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to speak with you this morning about disaggregating student achievement by subgroups to ensure that all students are learning. It is an honor for me to represent our school, Centennial Place Elementary, as well as our dedicated stakeholders throughout our community. As principal of Centennial Place, I am very proud of our progress toward eliminating an achievement gap among our subgroups and maintaining high standards and expectations for achievement by all students. In my allocated time, I hope to provide for you a description of our school and community, some important background information about the changes that have taken place over the past ten years and a general analysis of our student achievement results. I will conclude with an anecdotal comment about the longitudinal progress that our students have experienced over the eight years of our existence as the new Centennial Place Elementary School.

School and Community Information

Centennial Place Elementary School is a child-centered, community-based themed school that focuses on Science, Mathematics, and Technology. The school draws its student population from the Centennial Place neighborhood and surrounding communities including two shelters. The students bring a multiplicity of diversities in cultures, languages, socioeconomic status and customs.

The school's mission is to build a learning culture that provides a positive, personal educational experience for each child. We actively engage a community of learners in science, mathematics, and technology so that they become problem solvers, critical thinkers, effective communicators and life-long learners. Visitors to Centennial see a school where children are self-directed, engaged in spontaneous learning, and facilitators in project-based/hands-on learning activities. In addition, children are becoming conscientious protectors of the environment, becoming fluent in a second language, participating in rich opportunities for arts integration and becoming proficient in the sensible use of technology.

Our teaching staff accepts the decision-making responsibilities involved in molding the minds of the future. Visitors see teachers who are empowered to make decisions about implementing an all inclusive, spiraling curriculum that fosters higher order critical thinking skills, best practices, and inquiry learning. Such empowerment promotes a curriculum that improves daily decision-making, collaboration, professional development, and differentiated instruction to meet individualized student needs.

Centennial Place has a strong community and parental support system where active involvement is encouraged and expected. The school's governance model offers families and the community a voice and an opportunity to participate in the decision-making process at the school. Our visitors see a school where parents are actively engaged in meaningful support of the instructional program. Parents participate in parent workshops, action learning and on-going research and assessment. Most importantly, parents adhere to the contractual agreement that is crucial to student success.

In the Centennial Place School community, successful business corporations and higher education institutions share our vision for a 'break-the-mold school." They have committed to supporting the curriculum by volunteering, tutoring, and mentoring. Our community stakeholders include: the Coca-Cola Company, the Georgia Institute of Technology, Sun Trust Bank, Georgia Natural Gas Company, Publix Supermarket, the YMCA, the Atlanta Housing Authority, the Integral Group (Community Collaborative Team), Georgia State University, the Atlanta Symphony, the Georgia Protection Division, the Georgia Aquarium, and the law firm of Holland & Knight. These partners are committed to the belief that the school exists to serve the child and that each child will be a successful learner.

Background Information

The Learning Village idea for Centennial Place was conceived by a coalition of Atlanta Public Schools educators, university leaders, and community business stakeholders. This coalition was committed to creating an urban-community school that could intervene by resolving contradictions, shattering barriers, and providing a world-class education for urban youth. The Learning Village concept is grounded in a commitment of inclusion and opportunity for an entire generation of children. The ultimate goal of this unification is to create a pipeline beginning at Centennial to feeder middle school (Inman) and high school (Grady) and ultimately ending with our students enrolling into the Georgia Institute of Technology.

The birth of Centennial Place Elementary was a result of teachers at the then Fowler Elementary School and community leaders realizing that the school would need to make changes in order to meet the needs of the transforming community. Fowler Elementary school served the then Techwood/Clark Howell community, which was one of the oldest public housing projects built under Franklin Roosevelt. For many years the community was an impoverished area plagued with drugs and gang activity was rampant. Fowler was considered the "safe haven" for children in grades K-5. It provided students with standards-based learning. Parental involvement was minimal. Those parents who did become involved were dedicated to making a difference but their impact was not significant enough to cause change. The administrators and teachers that worked at Fowler were committed to changing the perception of student failure in this low-economical setting. They worked together to implement several initiatives that guided instruction and the governance of the school. Some of these were the Special Instructional Assistance (SIA) program which was a theme based program that offered hands-on instruction in grades K-2 only, the Project Impact program which was a systematic approach to teaching mathe-

matics, the Science Initiative in grades four and five, and the Writing to Read program in grades Kindergarten and first.

Several businesses in the area recognized the need to support the community elementary school because of the challenges students from impoverished areas face. Some of these partnerships included: The Coca Cola Company, the Georgia Institute of Technology, and Georgia State University. These partnerships offered resources as well as a mentoring program for students. Although Fowler seemed to have all the right ingredients, the test scores as well as the perception of the faculty, staff, parents and the community stakeholders indicated that there was still a need for a more systematic approach to ensure the success of all students throughout the school. Changes were occurring not only in the community but also in education and the school and the community began to set the foundation for meeting the needs of students in the changing global world.

On June 30, 1995, Atlanta Public School Board members hosted a luncheon in the President's Conference Room at Georgia Tech with Dr. Ben Canada, Superintendent for Atlanta Public Schools (APS). Representatives from the Center for Education Integrating Science, Mathematics, and Computing (CEISMC) and members from the Georgia Institute of Technology's (Georgia Tech) office for Minority Education Development (OMED) met to discuss the opportunities for developing a state-of-the-art elementary school to replace the current Fowler Elementary School. This school was to be built on a new location in the community on Luckie Street between a new YMCA building and the Carnegie Library, a Historic Registry edifice.

The proposed new Centennial Place community would involve redevelopment of the devastated urban area with Hope VI federal funds, a federal housing program begun under President Ronald Reagan with the aim of redeveloping blighted public housing projects and helping residents become homeowners. Centennial Place was planned as an innovative inner-city concept that includes individuals and families living seamlessly in subsidized housing along with middle income families in non-subsidized housing. The community includes a mixture of town homes and apartment homes both rental and ownership, 40 percent of which are reserved for public housing clients, 20 percent for low-income residents, and the rest designated for at-market prices. Central to the success of this concept would be the school serving as the catalyst that would attract residents, especially families, to the community. Approximately $1 billion was invested in the five-mile radius of the new and old school. Approximately $100 million was to be invested in the development of this mixed income community composed of the new school, YMCA, a supermarket, new housing, and the rest of the community.

Student Achievement

Since opening in August of 1998, we have seen continual improvement with our test scores. The percentage of students not meeting expectations has decreased. We believe the targeted assistance by tutors and "real world contexts" have positively impacted our overall scores. We have not only met our Superintendent's targets five years but have also met AYP six consecutive years earning us the distinction as a Title I Distinguished School. During the 2003-2004, we received an award from Education Trust Foundation for "Dispelling the Myth" with student achievement and economic diversity and continue to be recognized as a model school through The Achievement Alliance.

The school sets forth clear and high expectations for student learning. They address academics as well as behaviors and habits of mind. The entire community works relentlessly to ensure that all students meet these expectations and succeed at the highest possible level, and that no student falls through the cracks. For example, we recognized the need to provide periodic reviews for instruction on a timelier basis and a year-round calendar with quarterly remediation and enrichment opportunities was adopted. In addition to our year-round calendar, we have implemented an extended day program to increase the instructional day, hence, increasing time-on-task by focusing on specific skills. Because of the diversity of socioeconomic backgrounds of students at Centennial Place, all stakeholders voted to accept our school uniform initiative. We continually monitor progress to identify and assist those students in need of special help. Our process includes rigorous data analysis; the creation of individualized student profiles with attendance, grades, standardized scores, and interventions; implementing student instructional plans based on profiles; and utilizing ongoing authentic assessments benchmarking progress.

Students who qualify for the Program for Exceptional Children (PEC) are served in an interrelated model at Centennial. The In-School Team (IST) develops an individualized education plan (IEP) for each student designating the amount of pull-out time and/or collaborative services necessary. The plan is developed to target each

student's needs as well as differentiating instruction for the various learning styles. The interrelated and classroom teacher identify the objectives from the new Georgia Performance Standards that most closely align with the Georgia Criterion Reference Competency Test (CRCT) to aid in developing individualized instructional plans for the interrelated classroom. Some plans call for the interrelated teacher to provide services through consultation with classroom teacher concerning the individual student's needs. The classroom teacher and the interrelated teacher collaborate to create benchmarks and develop assessment strategies to provide interventions for the student to meet grade level standards. The IEP is monitored quarterly as determined by the teacher and yearly as determined by the IST to make sure that the testing addendum for student is amended if appropriate. In addition, the School Testing Coordinator remains abreast of allowable accommodations from the state. Examples of strategies to improve reading/language arts may include but are not limited to: concept mapping for comprehension, CORE strategies with phonics and decoding skills, and one-on-one instruction. The interrelated teacher and administrators participate in school visits to monitor high achieving schools where PEC has been successful.

Summary

At Centennial Place, we have welcomed the opportunity to comply with The No Child Left Behind Act. Prior to this important legislation, Centennial Place stakeholders developed a vision and mission that sought to dispel any myths that poor and minority students could not achieve commensurate with other young Americans. At Centennial Place, we have two subgroups mandated by NCLB—Black Students and Economically Disadvantaged Students. With these subgroups, we have not only narrowed the achievement gap, but we have also maintained a consistently high level of performance among all groups of students. In 2004-2005, all subgroups maintained a 90 percent or higher proficiency level on all tests.

Our subgroup of Students with Disabilities, while large enough to report results, is not large enough to legally require a performance standard for Adequate Yearly Progress. When we noticed in 2003-2004, that we had a significant achievement gap with our students with disabilities performing far below their non-disabled peers, we were determined to make significant changes and improvements. The changes included increased collaboration among regular and special education teachers and parents, allowable modifications in test administration included in the IEP, narrowing the scope and increasing the depth of instruction for specific standards and tracking individual student progress very carefully. These modifications were extremely effective in helping us achieve our desired outcomes. During the 2004-2005 school year, we nearly doubled the percentage of students with disabilities who were proficient in all subjects.

Georgia's standards are in the process of revision to be made more rigorous, which means making AYP will be a little more difficult. We support the new more rigorous standards and have confidence that our children and teachers are up to the challenge.

Conclusion

I want to conclude by again thanking you, Mr. Chairman and members of the committee, for allowing me to share our story with you this morning. I promised to conclude my presentation with an anecdotal story about our students' longitudinal progress over the past eight years. When we first opened our school in 1998, we were haunted by a story that no student from Fowler had ever attended the Georgia Institute of Technology. The children grew up literally across the street from one of the most prestigious science and technology institutions in the south, but none had been admitted. Moreover, Fowler students were not going to any colleges or universities. Last week, I had the pleasure to attend the Grady High School graduation ceremonies to observe our first fifth grade class of students as they graduated from high school. Our Centennial Place students were proudly represented in the printed program and on the stage for distinguished honors such as scholarships to prestigious universities around the country, Hope Scholarships to Georgia universities, memberships in the National Honor Society, GPA's of 90 percent or higher and subject area awards for straight A's or Outstanding Distinction in the Subject Area. We are also anticipating the strong possibility that one of our students, who will graduate from high school next year, will indeed attend the Georgia Institute of Technology.

ATLANTA PUBLIC SCHOOLS: CENTENNIAL PLACE ELEMENTARY ADEQUATE YEARLY PROGRESS

[Student data-subgroups; 100% participation rate thruout]

	Full academic year students w/scores	Black	Students w/disabilities	Economically disadvantaged
2005–2006 Reading/Lang. Arts*	222 students	205 students	26 students	119 students
Basic/does not meet	13.1%	13.9%	34.6%	18.5%
	29 students	28.5 students	9 students	22 students
Proficient/meets	61.3%	62.4%	55.8%	64.7%
	136 students	128 students	14.5 students	77 students
Advanced/exceeds	25.7%	23.7%	9.6%	16.8%
	57 students	48.5 students	2.5 students	20 students
Meets & exceeds	86.9%	86.1%	65.4%	81.5%
	193 students	176.5 students	17 students	97 students
2004–2005 Reading/Lang. Arts	209 students	198 students	23 students	127 students
Basic/does not meet	4.3%	4.0%	15.2%	5.5%
	9 students	8 students	3.5 students	7 students
Proficient/meets	47.4%	49.7%	56.5%	53.9%
	99 students	98.5 students	13 students	68.5 students
Advanced/exceeds	48.3%	46.2%	28.3%	40.6%
	101 students	91.5 students	6.5 students	51.5 students
Meets & exceeds	95.7%	96.0%	84.8%	94.5%
	200 students	190 students	19.5 students	120 students
2003–2004 Reading/Lang. Arts	223 students	212 students	17 students	134 students
Basic/does not meet	6%	6%	47%	8%
	14 students	13 students	8 students	11 students
Proficient/meets	46%	47%	38%	55%
	101.5 students	100 students	6.5 students	73.5 students
Advanced/exceeds	48%	47%	15%	37%
	107.5 students	99 students	2.5 students	49.5 students
Meets & exceeds	94%	94%	53%	92%
	209 students	199 students	9 students	123 students
2005–2006 Mathematics	222 students	205 students	26 students	119 students
Basic/does not meet	6.3%	6.8%	19.2%	7.6%
	14 students	14 students	5 students	9 students
Proficient/meets	64%	65.9%	69.2%	73.1%
	142 students	135 students	18 students	87 students
Advanced/exceeds	29.7%	27.3%	11.5%	19.3%
	66 students	56 students	3 students	23 students
Meets & exceeds	93.7%	93.2%	80.8%	92.4%
	208 students	191 students	21 students	110 students
2004–2005 Mathematics	209 students	198 students	23 students	127 students
Basic/does not meet	9.6%	9.6%	13%	10.2%
	20 students	19 students	3 students	13 students
Proficient/meets	69.9%	72.2%	82.6%	72.4%
	146 students	143 students	19 students	92 students
Advanced/exceeds	20.6%	18.2%	4.3%	17.3%
	43 students	36 students	1 student	22 students
Meets & exceeds	90.4%	90.4%	87%	89.8%
	189 students	179 students	20 students	114 students
2003–2004 Mathematics	223 students	212 students	17 students	134 students
Basic/does not meet	11%	12%	59%	16%
	25 students	25 students	10 students	21 students
Proficient/meets	63%	64%	41%	67%
	141 students	136 students	7 students	90 students
Advanced/exceeds	26%	24%	0%	17%
	57 students	51 students	0 students	23 students
Meets & exceeds	89%	88%	41%	84%
	198 students	187 students	7 students	113 students
2005–2006 Science	222 students	205 students	26 students	119 students

ATLANTA PUBLIC SCHOOLS: CENTENNIAL PLACE ELEMENTARY ADEQUATE YEARLY PROGRESS—Continued

[Student data-subgroups; 100% participation rate thruout]

	Full academic year students w/scores	Black	Students w/disabilities	Economically disadvantaged
Meets & exceeds	96%	96%	85%	95%
	213 students	196 students	22 students	113 students
Advanced/exceeds	23%	21%	12%	13%
	52 students	43 students	3 students	16 students
2004–2005 Science	209 students	198 students	23 students	127 students
Meets & exceeds	97%	97%	96%	98%
	203 students	193 students	22 students	124 students
Advanced/exceeds	25%	22%	17%	19%
	52 students	44 students	4 students	24 students
2003–2004 Science	223 students	212 students	17 students	134 students
Meets & exceeds	94%	94%	53%	92%
	210 students	199 students	9 students	123 students
Advanced/exceeds	24%	22%	0%	16%
	54 students	47 students	0 students	21 students
2005–2006 Social Studies	222 students	205 students	26 students	119 students
Meets & exceeds	95%	95%	92%	93%
	212 students	195 students	24 students	111 students
Advanced/exceeds	23%	22%	8%	13%
	52 students	45 students	2 students	15 students
2004–2005 Social Studies	209 students	198 students	23 students	127 students
Meets & exceeds	97%	97%	96%	96%
	203 students	193 students	22 students	122 students
Advanced/exceeds	21%	18%	9%	14%
	43 students	36 students	2 students	18 students
2003–2004 Social Studies	223 students	212 students	17 students	134 students
Meets & exceeds	95%	95%	65%	93%
	212 students	201 students	11 students	125 students
Advanced/exceeds	22%	21%	0%	15%
	50 students	45 students	0 students	20 students

*The GPS based CRCT for Reading & Lang. Arts in 2005–2006 is an entirely new and different test. Both the content and the performance standards have changed. Consequently, performance on these new tests cannot be meaningfully compared to results from previous years. Results should be regarded as a new ''Baseline'' for the new GPS based tests.

Chairman McKEON. Thank you.

Mr. Brittain.

STATEMENT OF JOHN C. BRITTAIN, CHIEF COUNSEL AND DEPUTY DIRECTOR, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Mr. BRITTAIN. Good morning, Mr. Chairman, Ranking Member Miller, and other members of the Committee.

Since the Lawyers' Committee's inception in 1963, we have advocated on behalf of children of color. The title of this hearing aptly describes the critical need from a civil rights perspective for school districts to publicly disclose data on the performance of specific groups of students, particularly those who have been the historic victims of discrimination. The Lawyers' Committee recommends that the Committee provide for the continuation of the disaggregation of the data. In addition, to fix the N size loophole problem, the Committee should consider proposing legislation that

continues to provide the States with discretion. However, it would set a maximum limit on the number of excluded students. If the States do exclude certain students, it should review the data on the excluded students to determine the level of efficiency. In all cases, of course, the excluded student should receive the maximum remedial measures to aid those in need of improvement and to expand upon their learning opportunity.

From the perspective of advocates for educational equity and improvement, data on the performance of school districts in the aggregate and performance of groups of students in particular groups is so crucial to the extent of measuring the scope of inequality as well as the hopeful evidence that some schools are making improvements. Therefore, the civil rights legal organization, joined with the professional educators in promoting the transparency and the disaggregation of data on student achievement.

Mr. Chair, I don't see the countdown on my monitor. How much time do I have left?

Chairman MCKEON. Two minutes.

Mr. BRITTAIN. Thank you. No Child Left Behind, to a certain extent, has forced very difficult political choices for some States. They can either improve education or they can lower the bar. Unfortunately, No Child Left Behind has created a lot of unintended consequences. No Child Left Behind in some States has been interpreted to mean, no State shall look bad, in terms of their annual yearly progress. To comply with the goals of No Child Left Behind, to increase those student learning and achievement scores, some States could either improve education or they could lower the bar of success. Given sometimes the principle that a rational actor often tends to choose the course of least resistance, some State education authorities have opted to lower the bar or omit data to look good because this choice offers less resistance than improving the product of education in the schools.

The N size controversy demonstrates that some States have taken advantage of the legal loopholes in No Child Left Behind. We can certainly stipulate that some States may be justified in not considering a small number of students' scores, for example, where the subgroup is truly too small to yield statistically valid results on the accountability purposes. However, it is nothing short of unconscionable that such large numbers and percentages of African-American, Latino, Native American students, as you described in your opening remarks, are left behind. And we will not go into detail about the 2 million students who were not counted across this Nation.

So, in conclusion, when students don't score—when students' scores don't count and their schools continue to make annual progress, students are denied their statutory rights and benefits under No Child Left Behind. If No Child Left Behind is going to fulfill its promise as a civil rights education program of this generation, aggressive steps must be taken by States and by the Federal Government to ensure that students who are the primary intended beneficiaries of Title I are not ignored in the end.

I would like the privilege, Mr. Chair, to supplement my testimony with two additional documents: A memo of law—a memorandum of law that the NAACP and the Lawyers' Committee filed

in the case entitled Connecticut v. Spellings, pending in the Federal Court in Connecticut, and I would also like to introduce a set of news clippings regarding the pending application of the NAACP to intervene in that case concerning No Child Left Behind to provide a complete record of my testimony here today.

[The prepared statement of Mr. Brittain follows:]

Prepared Statement of John C. Brittain, Chief Counsel and Senior Deputy Director, Lawyers' Committee for Civil Rights Under Law

Introduction

The Lawyers' Committee for Civil Rights Under Law wishes to thank the Honorable Howard P. "Buck" McKeon, Chairman, and the Honorable George Miller, Ranking Member, and the members of the Committee on Education and the Workforce for giving me the opportunity to testify today about the importance of "Disaggregating Student Achievement by Subgroups to Ensure All Students Are Learning."

Former President John F. Kennedy started the Lawyers' Committee over forty-two year ago when he summoned two hundred and fifty of the top lawyers in the nation to provide pro bono legal assistance in civil rights cases. Our core mission is to ensure equality for primarily racial and ethnic minorities in education, housing, voting, employment, minority businesses, environmental justice and community development.

We have a long history in litigation and public policy advocacy on behalf of children of color. I was honored to come to the Lawyers' Committee last year as Chief Counsel and Deputy Director, after a thirty-seven year career in academia and public interest practice with expertise in school desegregation and educational equity. In addition to serving as chief counsel and deputy director for the Lawyers' Committee, I also direct our Education Project.

Recently, the Lawyers' Committee filed a motion to intervene in a well publicized federal lawsuit by the State of Connecticut against the Secretary of Education, Margaret Spellings, and the United States Department of Education regarding the No Child Left Behind Act (NCLB) on behalf of the State Conference of the NAACP and several individual plaintiff parents and their school age children, who attend low-performing Title I schools in Hartford. See Appendix A and B.

The Lawyers' Committee is a member of the Leadership Conference on Civil Rights, which supported many of the provisions in NCLB and supported final passage, as well as full funding. The Lawyers' Committee has not examined or taken a position on each and every provision of NCLB, however, and like most organizations, there may be provisions in the law we determine should be improved in the next reauthorization. We look forward to reporting back to the House Committee on Education as we progress in our process of reviewing implementation of the law, as well as the statutory, regulatory and enforcement barriers to full realization of NCLB's promise.

The title of this hearing aptly describes the critical need, from a civil rights perspective, for school districts to publicly disclose data on the performance of specific groups of children, particularly those who have been historic victims of unequal educational opportunities.

The Promise of NCLB

The NCLB Act joins generations of legal efforts to secure equal educational opportunities for racial and ethnic minorities, poor and other disadvantaged schoolchildren. The journey in the modern era began with Brown v. Board of Education aimed at dismantling the dual system of de jure segregation. That quest continued with equal financing suits to eliminate disparities in funding between property rich and poor school districts that relied heavily on property taxes to fund local education. More recently, a new generation of adequacy funding suits seek to make the state pay for the standard of education that is guaranteed by law. All of these efforts are designed to produce equality in theory, as well as in the output of educational achievement.

Amidst this backdrop, the NCLB Act became the federal government's means to ensure the highest level of educational attainment, particularly for low income and under performing children. From the perspective of advocates for educational equity and improvement, data on the performance of school districts in the aggregate and the performance of groups of students in the disaggregate provide crucial information on the extent and scope of inequality, as well as hopeful evidence that some schools are improving. Therefore, civil rights legal organizations join with many pro-

fessional educators in promoting the transparency and the disaggregation of data on student achievement.

NCLB's premise is that all children can learn and are capable of becoming proficient in reading and math. Further, NCLB's promise is that all schools will provide the quality teaching, curriculum aligned to standards, and resources needed to make good on this goal by the year 2014. This may seem like too little time for school boards and school officials at the state and local level. But for children and their parents consigned to low-achieving schools, like those in Hartford, the timeline in NCLB is not soon enough. For example, the entire Hartford School District has "failed to make 'adequate yearly progress' under NCLB and has been identified by the State as a district "in need of improvement" under Title I." See Memorandum of Law In Support of Motion To Intervene on Behalf of Connecticut State Conference of the NAACP and Minority Parents And Students In Connecticut ("Motion To Intervene") at 4, Connecticut v. Spellings, No. 3:05-CV-01330 (D. Ct. Jan. 30, 2006). While NCLB promises to ensure that all schools will provide all students with a quality education by the year 2014, for students who attend school in the Hartford School District, 2014 is much too late. As it stands now, these children attend substandard schools that are failing to provide them with an education that will enable them to compete on a level playing field with other students in the state, the nation and the world. Motion To Intervene at 12. In fact, if conditions in the failing schools in Hartford, Connecticut, and other cities throughout the country, are not improved immediately, there is little chance that students forced to attend these failing schools will have a realistic opportunity to succeed in school or in life.

The Importance of Disaggregated Student Achievement Data

Simply put, when test scores are not broken down by race, income and other important categories, our nation's wide and unacceptable achievement gaps are covered up. When minority students don't count, there is little incentive for schools to pay attention to their needs. Schools are able to boast of successes even when their minority, low-income, or disabled students are barely able to decipher words or solve simple math problems.

When these historically underserved groups of students do count, achievement gaps are exposed and schools can no longer slide by, or be considered successful when they fail to properly educate their minority students. Again, using Connecticut as an example, while 88% of white fourth grade students in Connecticut are considered proficient in math, only 56% of African-American Connecticut fourth grade students are considered proficient in math. See Summary of Student Achievement on the Connecticut Mastery Test, available at *www.cmtreports.com/iReport/Report.aspx* . Similarly, while 76% of white fourth grade students are considered proficient in English only 41% of African-American fourth grade students are considered as such. Id.

When minority students' scores count, educators know they must educate all students to high standards, and they can be empowered to do so. Robust reporting of achievement data can provide educators with tools to identify the individual students and groups of students who most need their help. Parents have information not only on their own child's achievement, but on how that achievement compares to his/her subgroup within the school, the school as a whole, the school district and the state. Parents can shop for schools, if they are able, with better "consumer information." They can decide whether to try to take advantage of NCLB's transfer provisions if their child is in a school "in need of improvement." And parents, acting together or through organizations like the NAACP in Connecticut, can organize and pressure their state and local officials to do a better job in improving their schools and ensuring the high-quality teachers and resources they need to succeed.

History of Disaggregated Student Achievement Data Under Title I

Beginning in 1994, Congress required disaggregation of student achievement data on state assessments required under Title I. This measure was not originally included in the legislative drafts of the bill in the House or the Senate, including the bill proposed by the Clinton Administration. Under the visionary leadership of members of this Committee, however, including that of Rep. Major Owens (D-NY), Rep. Xavier Becerra (D-CA) and other members of the Black and Hispanic Caucuses, joined by members on both sides of the aisle, Congress agreed to require all schools, school districts and states receiving Title I funds to disaggregate student achievement data as follows:

Within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically

disadvantaged students as compared to students who are not economically disadvantaged.

Improving America School's Act of 1994, Pub. L. No. 103-382, § 1111 (b)(3)(I), 108 Stat. 3518, 3525 (1994).

However, two problems arose with this new provision: 1) the federal government and the states were reluctant to impose real accountability on schools and school districts for the actual progress of any of the subgroups, and 2) many states did not report complete, user-friendly data disaggregated by the required categories. As a result, while there was some increase in the availability of data on achievement gaps, there was very little encouragement to work toward actually closing them.

In the NCLB of 2001, however, there was strong bipartisan consensus that overall scores, or averages, should not be allowed to obscure the large achievement gaps between poor and non-poor and minority and majority students. Thus, both the accountability and the reporting (or "report card") requirements were tightened.

The result has been greater transparency, and in many schools, greater attention to closing the gaps and improving educational opportunity for groups of students historically "left behind."

The NCLB Undercount: the Recent "N" Size Controversy = "Gaming the System"

The recent reports by the Associated Press on the so-called "N" size issue reflect one of a number of ways states have tried to "game the system," according to Dianne Piche of the Citizens' Commission on Civil Rights.1 See Appendix C. The "N" size refers to the minimum number of students needed in a subgroup before that subgroup's scores are counted for purposes of determining "adequate yearly progress" ("AYP") under NCLB.

NCLB has forced states to make some difficult political choices: they can either improve education or lower the bar. Unfortunately NCLB has created a law of unintended consequences. The No Child Left Behind Act has been interpreted to mean, "No State Wants to Look Bad" in terms of annual yearly progress. To comply with one of the goals of NCLB, to increase learning for all students, states have narrowed their strategies to two logical choices—improve the quality of education or lower the bar for satisfying state goals set on standardized tests. Given a further scientific principle that a rational actor often tends to choose the course of least resistance, many state education authorities have opted to lower the bar or omit data to look good because this choice offers less resistance than improving the product of education in the schools. See James E. Ryan, Article, The Perverse Incentives of the No Child Left Behind Act, 79 N.Y.U. L. Rev. 932, 947-48 (2002). The "N" size controversy demonstrates that some states have taken advantage of a legal loophole in NCLB.

Congress did not prescribe a minimum "N" size in the law, or even an acceptable range. Rather, the law leaves it up to the states to set their "N" size (as well as other accountability requirements) and to submit their accountability plans to the Secretary of Education for approval. The regulations issued by the Department of Education, provide in relevant part:

Sec. 200.7 Disaggregation of data.

(c) Inclusion of subgroups in assessments. If a subgroup under Sec. 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under Sec. 200.2.

(d) Disaggregation at the LEA and State. If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—e.g., the LEA or State level.

Improving the Academic Achievement of the Disadvantaged, 67 Fed. Reg. 71709 (December 2, 2002) (codified at 34 C.F.R. § 200.7).

We can stipulate that there may be some justification for not considering a small number of students' scores, for example, where a subgroup truly is too small to yield statistically valid or fair results for accountability purposes. But, it raises reasonable suspicion that some states are trying to permit schools and districts to evade their responsibilities when the minimum "N" sizes range from 5 students in a subgroup in the state of Maryland to up to 100 students in California. Moreover, the Center for Education Policy, which has been tracking NCLB implementation, reported that 23 states moved to increase their minimum "N" size in 2004-05.2 Finally, we are not aware of any states that have moved to decrease their "N" size recently in order to enhance accountability for their subgroups.

However, it is nothing short of unconscionable that such large numbers and percentages of African-American, Latino and Native American students' scores are "left behind." For example, the AP series reported:

• Nearly 2 million students across the nation have scores that were not counted.

• The vast majority of these students were minority students. Less than 2 percent of white students' scores were excluded at the school level, while about 10% of African American and Latino students' sores were left out of AYP subgroup calculations. Over 1/3 of Asian students' scores and just under 1/2 of Native American students' scores were excluded.

• Nearly 400,000 students' scores were excluded in California where the "N" size can be as large as 100 students. African American students may be numerous enough to be counted in schools elsewhere in the country, but because of the state's excessive minimum group size rules, in many parts of this diverse state, we found that their scores are not counted at the school level.

When students' scores don't count and their schools continue to make AYP, students are denied statutory rights and benefits under NCLB. Take California, for example. If NCLB is going to fulfill its promise as the civil rights education program of this generation, aggressive steps must be taken by states and the federal government to ensure that the students who are the primary intended beneficiaries of Title I are not ignored.

Conclusion

In conclusion, I recommend that NCLB maintain the full provisions for disaggregation of data. In addition, to fix the "N" size loophole problem, the Committee should consider proposing legislation that continues to provide states with discretion, but sets a maximum limit on the number of excluded students. In addition, if the state excludes a minimum number of students from testing, it should review the data on the excluded students to determine their level of proficiency. In all cases of excluded students, school districts should use remedial measures to aid those students in need of improvement.

APPENDIX A

Not Getting Left Behind, WASH. POST, Feb. 5, 2006, at B06, available at *http://www.washingtonpost.com/wp-dyn/content/article/2006/02/04/AR2006020400915—pf.html.*

Not Getting Left Behind

IT'S BEEN a long time in coming, but at least a few of President Bush's opponents are beginning to see the potential of his No Child Left Behind legislation. Thanks to the law, which requires states to assess children annually and to break down the results by minority group and income level, it has for the first time become possible to track which schools are failing which students. More important, the law also requires states to turn schools around and help them succeed.

True, neither the Lawyers' Committee for Civil Rights Under Law nor the NAACP, two of the organizations that are beginning, cautiously, to see the possibilities of the law, is exactly advertising its support. But last week, the Connecticut chapter of the NAACP did quietly come down on the side of Education Secretary Margaret Spellings, who is being sued by Connecticut over some of the act's provisions. The state's politicians are angered by Ms. Spellings's refusal to waive some of the No Child law's requirements—specifically, the state wants to test its children every other year, instead of every year—and they contend that the law doesn't provide the necessary funding to allow states to meet its requirements.

Civil rights lawyers point out that this line of argument could enable states not to comply with other laws, among them the Civil Rights Act, which was also "unfunded." But John Brittain, chief counsel to the Lawyers' Committee, goes further, noting that Connecticut, although the wealthiest state in the country, also has the biggest achievement gap between white and minority students. "Children deserve those annual assessments," he says, so that they can be given the help they need. In terms of its goals and intent, if not its implementation, he also calls No Child Left Behind potentially the "greatest civil rights education statute that has ever been passed."

These are brave statements: Not all civil rights advocates will be pleased to see the Connecticut NAACP joining a lawsuit on the same side as the Bush administration. They may also be too radical for much of the Democratic Party. In his response to the State of the Union speech last week, Virginia Gov. Timothy M. Kaine (D) repeated his party's line, claiming the act is "wreaking havoc on local school districts." The NAACP needs to drag its friends around to its point of view. By helping to fine-tune and implement the law instead of constantly running it down, Democratic poli-

ticians, child welfare advocates and teachers unions could help fix broken school systems as well. A profile of once-disastrous, now-successful Maury Elementary School in Alexandria by The Post's Jay Mathews last week showed what can be achieved if teachers and administrators use the law well. It's an odd idea, getting the Democrats to embrace a Republican project. But if they are brave enough to do it, thousands of inner-city children will be better off.

APPENDIX B

Jeff Archer, Civil Rights Groups Back NCLB Law in Suit, EDUC. WEEK, Feb. 8, 2006, available at *http://www.edweek.org/ew/articles/2006/02/08/22conn.h25.html.*

Civil Rights Groups Back NCLB Law in Suit

Connecticut NAACP files to intervene on side of Bush administration.

By JEFF ARCHER

Civil rights groups are seeking to join the federal government in defending the No Child Left Behind Act from a legal challenge by Connecticut, potentially giving the Bush administration important, if unlikely, new allies in arguing for the law.

The Connecticut NAACP, on behalf of three minority students in high-poverty schools, filed papers in federal court in New Haven, Conn., on Jan. 30, asking the judge in the Connecticut v. Spellings case to allow the group to intervene on the side of the U.S. Department of Education.

Connecticut v. Spellings

Connecticut Makes Oral Arguments

Connecticut filed a lawsuit in August charging that the No Child Left Behind Act is an unfunded mandate. A judge told state Attorney General Richard Blumenthal last week to get more documentation for the state's case.

Civil Rights Groups Weigh In

Four civil rights groups, including the Connecticut NAACP and the national office of the NAACP, last week sought to join the U.S. Education Department in defending the No Child Left Behind Act. Dennis C. Hayes, the general counsel for the national NAACP, explained that allowing Connecticut to opt out of the federal law's test requirements would set a dangerous precedent for other states.

Also providing legal support for the effort are lawyers from three national groups: the Citizens' Commission on Civil Rights and the Lawyers' Committee for Civil Rights Under Law, both based in Washington; and the national office of the NAACP in Baltimore.

Scot X. Esdaile, the president of the Connecticut NAACP, said the filing should not be read as an endorsement of the federal government's handling of the education law, but rather as an attempt to ensure that the voices of poor and minority students are heard in the case.

"If you want to get at the table, you have to choose a side," he said. "On this particular issue-not on all the intricacies of the law-we choose to stand on the side of the federal government."

Calling the No Child Left Behind Act an illegal "unfunded mandate," Connecticut Attorney General Richard Blumenthal filed suit against the Education Department in August, after the agency refused to grant the state waivers from some of the law's testing provisions. ("Connecticut Files Court Challenge to NCLB," *<http://www.edweek.org/ew/articles/2005/08/31/01conn.h25.html>* Aug. 31, 2005.)

Connecticut education officials say that assessing students in grades 3-8, as the law requires, will cost $8 million more than federal officials are providing. The state has tested only in grades 4, 6, and 8, as well as grade 10, and it questions the education value of expanding its assessments.

Bad Precedent?

Dennis C. Hayes, the general counsel at the National Association for the Advancement of Colored People's Baltimore headquarters said allowing Connecticut to opt out of such a critical part of the federal law would set a dangerous precedent by encouraging policymakers elsewhere to do the same.

"If we view No Child Left Behind in terms of civil rights, then we are concerned about a state begging to be excused from participating or complying with an act intended to help disadvantaged people," he said.

Signed into law by President Bush in early 2002, the No Child Left Behind Act seeks to hold schools and districts accountable for student performance, particularly among those students traditionally seen as at risk of academic failure.

Civil rights leaders have been split in their views of the law. While agreeing with its goals, some argue that it relies too heavily on test scores and stigmatizes low-income students. Others see it as an effective way to redirect resources to needy students.

Lawyers for some of the groups seeking the intervention say they still have concerns about the law, but they worry about letting a state off the hook for improving student achievement.

Although Connecticut's overall student performance is among the highest in the country, the achievement gaps between its minority and white students are some of the widest in the country, by some measures.

"The key question is about the accountability of state and local officials for the progress of students," said William L. Taylor, who chairs the Citizens' Commission on Civil Rights and is a long-time desegregation lawyer.

Specifically, the Connecticut NAACP asked in its motion last week to become a defendant in the suit, along with the U.S. Education Department. Should the judge grant that, and the case moves forward, the civil rights lawyers from each of the groups could then argue against Connecticut's suit in court.

John R. Munich, an Atlanta-based lawyer who has followed the case, said the result could be that a suit over who pays for what would concentrate more than it would otherwise on the educational needs of the law's intended beneficiaries.

"It adds an extra dimension to the lawsuit, and I assume what the civil rights groups will try to do is focus on the impact of NCLB on children," said Mr. Munich, a partner at Sutherland, Asbill, and Brennan LLC, which often represents states in education finance cases.

No Decision on Dismissal

Reacting to last week's motion, Chad Colby, a U.S. Education Department spokesman, said, "We're encouraged by their support."

But Connecticut Attorney General Blumenthal said in a statement that he regretted that he and the NAACP, "are on different legal sides when we share the basic goals of No Child Left Behind."

Gary Orfield, the director of the Civil Rights Project at Harvard University and a critic of the way the NCLB law has been carried out, called it "unwise" for civil rights leaders to have taken the action.

"I think it's important that they be specific and limit their targets, and don't allow themselves to be used as allies to enforce a law that really has serious, counterproductive effects on schools that serve minorities," he said.

Last week's action came as U.S. District Judge Mark R. Kravitz, who is presiding over the case, heard oral arguments from both the state and the federal government on a motion by the latter to dismiss the case. The civil rights groups also filed papers in support of the call for dismissal.

Any expectation of a speedy decision on whether to dismiss the case was swept away on Jan. 31 when Judge Kravitz told Mr. Blumenthal to amend his complaint with new information about the minimum cost of putting in place the additional testing required by the NCLB law.

The Education Department argues that Connecticut's estimates of what it will cost to meet the requirements include a testing regimen more expansive than what the law requires.

Mr. Blumenthal has until Feb. 28 to file the additional documents, after which the federal government will have 30 days to respond. By then, Connecticut plans to have administered the additional tests at the heart of the dispute.

Both sides also have until the end of this month to comment on the Connecticut NAACP motion to intervene.

APPENDIX C

Lynn Olson and Linda Jacobson, Analysis Finds Minority NCLB Scores Widely Excluded, EDUC. WEEK, Apr. 26, 2006.

Analysis Finds Minority NCLB Scores Widely Excluded

By LYNN OLSON and LINDA JACOBSON

The federal government is permitting many schools to escape accountability for the progress of racial or ethnic subgroups under the No Child Left Behind Act, according to a computer analysis released by the Associated Press last week.

Under the law, signed by President Bush in 2002, schools must meet annual performance goals for their student populations as a whole and for specific groups of students. Those groups include racial and ethnic minorities and students who are from low-income families, speak limited English, or have disabilities-as long as

enough students in each category meet minimum group sizes set by each state and approved by the U.S. Department of Education.

Schools receiving federal Title I aid that miss the targets, known as adequate yearly progress, or AYP, for two or more years are subject to increasingly serious consequences.

But, according to the AP's analysis, the minimum group, or "N," sizes set in many states are so large that schools aren't being held accountable for the subgroup performance of some 1.9 million students who fall into various racial or ethnic categories in calculations of AYP.

While Louisiana will count a subgroup once it has 10 students, for example, in California each subgroup must have at least 50 students and make up 15 percent of students tested in the school. (Once a California subgroup has at least 100 students, it no longer has to meet the 15 percent minimum.)

In most cases, schools must still publicly report the subgroup performance of students, even if it doesn't meet the size for counting that group in AYP calculations. All of the scores are supposed to be included in calculating whether a school's student body as a whole has met its AYP targets.

"I do think that states have gamed the system," said Dianne M. Piché, the executive director of the Citizens' Commission on Civil Rights, an advocacy group based in Washington. "What we learned from this is that minority students are much more likely not to be counted than white students."

State officials countered that even when students' test scores aren't counted for subgroup accountability in a racial or ethnic category at the school level, they still may be counted in another category, and in subgroup results at the district level.

"Just because they're not included in the ethnic group, [it] doesn't mean they're not in the English-language-learner group," said Pat McCabe, the director of policy and evaluation for the California Department of Education.

"We're a big state, and we have a lot of students," he said. "They made it sound like we're hiding the kids."

According to the AP, the achievement scores of more than 400,000 minority students in California are not being counted by their racial or ethnic categories at the school level when determining AYP results.

Minority Reporting

To arrive at a nationwide estimate of how many students are not included in racial or ethnic subgroups in calculating AYP at the school level, the Associated Press, a news-gathering cooperative, used 2003-04 school enrollment figures collected by the federal government and the current minimum "N" sizes approved for each state.

The AP analyzed enrollment for each school in grades 3-8 and in grade 10, because the law requires states to test students annually in grades 3-8 and at least once in high school for purposes of calculating progress. The analysis focused only on the law's five major racial and ethnic categories: white, black, Asian, Native American, and Hispanic. It did not examine students in other categories, such as those with disabilities, to avoid double-counting students who fall into multiple categories.

It found that the scores for fewer than 2 percent of white children nationally aren't being counted as a separate category in calculating AYP at the school level. In contrast, Hispanic and black students have roughly 10 percent of their scores excluded from subgroup accountability, as do more than one-third of Asian students and nearly half of American Indian students.

Chad Colby, a spokesman for the U.S. Department of Education, said, "It's something that [Secretary of Education Margaret Spellings] is going to look into."

But he noted that before enactment of the law, an overhaul of the Elementary and Secondary Education Act, only a handful of states were even reporting test scores broken down by racial and ethnic subgroups, something they routinely do now.

Based on the AP's own analysis, Mr. Colby added, about 93 percent of students are included both in a school's overall population and in a racial or ethnic category for purposes of calculating AYP.

"I will be seeking from Secretary Spellings detailed information about this problem and about what steps she and her department are taking to correct it," said Rep. George Miller of California, the ranking Democrat on the House Education and the Workforce Committee.

The provision in the law was meant to ensure that judgments made about schools are statistically valid and reliable. But Ross Wiener, a principal partner with the Education Trust, a Washington-based advocacy group that has strongly supported the law, said, "If we were really looking to achieve those goals, there would be much

more consistency across states." He suggested the Education Department convene experts to craft more uniform guidelines.

ENDNOTES

[1] Citations to some of the AP stories:

• 2 million scores ignored in 'No Child' loophole, THE ASSOCIATED PRESS, Apr. 17, 2006, *http://www.msnbc.msn.com/id/12357165/from/ET/*.

• Nicole Ziegler Dizon, Ben Feller, and Frank Bass, States Omit Minorities' School Scores, THE ASSOCIATED PRESS, *http://www.washingtonpost.com/wp-dyn/content/article/2006/04/17/AR2006041700677.html*.

• Nicole Ziegler Dizon, No Child Loophole Masks Achievement Gap for Black Students, THE ASSOCIATED PRESS, Apr. 17, 2006, *http://www.belleville.com/mld/belleville/news/politics/14362964.htm*.

• No Child Left Behind, WALL STREET JOURNAL, available at *http://online.wsj.com/article/SB114626648623739377.html?mod=googlenews—wsj*.

[2] Lynn Olson, Shifts in State Systems for Gauging AYP Seen As Impeding Analysis, EDUCATION WEEK, Nov. 30, 2005; Center on Education Policy, From the Capital to the Classroom: Year 4 of the No Child Left Behind Act (2006).

Chairman MCKEON. No objection. Those documents will be included in the record.

Has roll been called? We have just been called to the floor to vote, and if we can ask you to be patient with us, we have a couple of votes, and we will return in about 20, 25 minutes. So the Committee will stand in recess then until the conclusion of those votes. Thank you.

[Recess.]

Mr. OSBORNE [presiding]. If we could please resume seats, etc.

I apologize for the delay. The Chairman misrepresented the length of time, you will notice. And we are now ready for questions, and I will start.

As you know, we have 5 minutes to ask our questions and get your answers in so we can try to be—make the interchanges as rapidly as possible with respect to this.

And let me start with you, Secretary Simon. The whole N size thing concerns me. I am not saying I disagree with it, but I am not sure I totally grasp it, and I am not sure I totally grasp the mathematics of it. Since you were a math professor, math teacher, maybe you can help me with this. And Dr. Peiffer has indicated Maryland may be the smallest N size at five. I think my State, Delaware, is 40. But then there are percentages in some of these States that make it a lot larger.

It seems to me the whole concept of No Child Left Behind and, as Mr. Miller said, in addition to it being an education act, it is a civil rights act as well as it is to educate everybody. And when you have these differing group sizes regardless of the size of the particular school or the class, it seems to me it begs the possibility that there are more kids being left behind when you get your N sizes or disaggregated group sizing too large. Or is the algebra or math of this such that I am not correct in terms of what I am saying? And I will have some follow-up questions, but let us just start with that. I mean, these are basically State plans in which the Department of Education is allowing a substantial amount of variance, and my question to you is, why?

Mr. SIMON. I think we have to go back to when the law was first created. In 2003, when the plans were due, this was brand new for States and for the Department. In terms of these plans and how to make the plans fair and reliable, make them fair to the States

as well as make them fair to children, we were breaking new ground, and so in the correct, I think, haste to get these accountability plans in, we tried to make that balance, the right tension between what was fair to schools and States and what was fair to kids.

In the interim, we have had about half of the States since 2003 request a change in their N size. Many, I will have to tell you, we have said, no, to on their first request. So the final approval that you see on their official plan changes were many times a result of negotiation with them from an initial request.

We look at a lot of information when we determine an N size. We don't just say, well, because State X has 40, then you are automatically going to get 40. We have ask, in every instance when there has been a change request for an N size, we ask for impact data. We ask it from the school level. How many schools will this impact in terms of getting subgroups out of accountability? We look at the size of the school. We look at the distribution of kids. We look at the racial balances. We look at a lot of things, and we make the State justify to us how that is going to make their plan as reliable as it can be.

Now, that having been said——

Mr. OSBORNE. Not to interrupt you. Why don't we just have one number for everybody? I mean, playing devil's advocate, why not just say, it is 30 for everybody or whatever it may be?

Mr. SIMON. Simply because the States——

Mr. OSBORNE. Thirty or less.

Mr. SIMON. The States, in terms of how they organize their schools, some States have very small schools, and an N size of 30 is not appropriate. It would be too big. It would let all kids out of accountability, all subgroups out of accountability. Other States, such as Texas and California, they have schools of over 1,000 or 2,000 kids. The size of 30 probably wouldn't be reliable enough for a school that large. So we look at, again, individuality of how the State schools are organized.

Now, that having been said, starting this year with the latest rounds of requests for changes of N size, we had, I believe, 10 States request to increase an N size. We have not granted any of those. We granted one, and that was to Alaska, and what they were doing was getting—they had higher N sizes for their special ed and LEP kids. So we agreed on a compromise where their normal or their regular N size was raised a little, but their LEP and special ed N size was dropped. So now they are on a consistent N size. That is the only approval we have had this year. We basically said, no, with the—with this past year being the watershed year, if you will, in terms of all grades being tested, this is the first year every State has all grades tested.

Mr. OSBORNE. Let me bring Dr. Peiffer in on this.

Maryland is a relatively small State but has some fairly large schools. Do you agree with this? Or do you have a very different vantage? Not that I am trying to pitch you against each other. I am just curious on your views of the N size, particularly in light of what Maryland has done.

Mr. PEIFFER. For Maryland, it was a logical choice in the respect we had been using an N-5 during the 1990's with their old account-

ability system, and transitions over to No Child Left Behind, it really didn't create a concern here.

Now, our schools we have a relatively dense population. It is a small State, 890,000 students perhaps. Our schools, particularly in the suburban areas and urban, are relatively large, but we felt that even with those, we are finding that some schools might have elementary schools that might have 40 special education students, and 40 would eliminate that subgroup, and in many cases, as far as the special services subgroups, that would be the largest of them. So we felt a five pretty well represented what we wanted to do with schools.

Mr. OSBORNE. OK. I still have to work this out in my own mind. I am not disagreeing with anything anybody has said here. I just want to make sure I understand that. I guess I just have this concept that you could have an N size that is, at least for most schools, would be a workable number at a certain cap. Of course, if I had my way, I might even have a national standard exam to go along with all this, too, but that is a whole other issue you probably don't want to get into today, but I think it is an important subject in terms of our review as far as what the authorization's going to do. And Secretary Simon, I am concerned in what some of these applications are for these schools you are turning down, et cetera. Not State by State, but just in general, what you are looking for? And why you are making the decisions at the Department that you are? And I have a lot of faith in what you all do over there, so I would be interested in knowing about that. But my time is up and let me yield 5 minutes to Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. Simon, toward the end of his testimony, Mr. Brittain States that when students' scores don't count and their schools continue to make AYP, students are denied statutory rights and benefits under No Child Left Behind. Is that accurate?

Mr. SIMON. Yes, sir. I would agree with that.

Mr. MILLER. So what happens to these students now that they don't count?

Mr. SIMON. I want to respectfully disagree that they do count. As I indicated before, in many cases, these students are——

Mr. MILLER. Does not the status of the school trigger a series of events in terms of interventions and theoretically additional funding that flows to those schools because of the status of that school?

Mr. MILLER. Sure. Yes.

Mr. MILLER. When I look at the competition for school dollars in school districts, certainly big diverse districts, that status may prove to be a relief to somebody who is apportioning dollars to schools because, theoretically, they are AYP, and you have other schools that aren't AYP, and you have to do some triage.

Mr. SIMON. That is important to us. We want to make sure if a school is identified, it truly is an improvement. If it is a false positive, we don't want that either.

Mr. MILLER. Identified as AYP because of the N number, and those students may not get the right tutoring, may not get the transfer, may not get mentoring, may not get additional flows of money that are targeted from the national act to those schools that are schools in need.

Mr. Brittain, is that accurate?

Mr. BRITTAIN. Yes. Precisely, Congressman Miller. That is what we are complaining about, that the whole set of interventions are not made available, including the basic notice that they may have a right to tutors; they may have a right to transfer. Many nonperformance schools, they have a right to a whole set of other aid, special circumstances.

Mr. MILLER. That is how we wrote the law in the beginning. We were trying to close a gap, and the remedial services and hopefully revenues would be made available to schools to—because now you have identified a cohort of students that are in need of help.

Mr. Peiffer, this was touched upon by Mr. Castle, but you obviously have made—you have overridden the idea of how this is unreliable if you have five students in a school of 800 or 900.

Mr. PEIFFER. When we look at the subgroup—my apologies. When we look at the subgroups, we use the confidence interval statistic so we are not being unduly fair—unduly harsh on the school, so it is if a very, very small subgroup, we would accept a target a little bit lower than their normal target for AYP for that year. If it is a small group. If it is a very large group, it is pretty much on target for the year. So that is—that the statistical allowances we have put in place have helped people feel it has been pretty fair.

Mr. MILLER. It would seem to me that there is a very high burden on the Department of Education in accepting an N group that is of any substantial size because if this starts to appear to be fairly arbitrary—I appreciate the rationales, but the acts and the numbers seem to be fairly arbitrary. If that is the case, then you have the Department of Education denying fundamental and basic services that have been designed to help the achievement of these children, from those children getting those services, because it sets the status of the school which triggers the following actions. Does that seem to follow?

Mr. SIMON. Well, as I indicated before, we say, no.

Mr. MILLER. I know you say no. I am wondering what you said yes to.

Mr. SIMON. Again, in the case—in the case that we just heard here, they have a confidence interval that goes along with the five. Five is extremely low, and we always sing their praises for having an N size that low. That is commendable. Don't get me wrong.

Mr. MILLER. Is it possible you could have a much lower number with the confidence index, and that would tell you more about that school and whether that is a rational determination or not as opposed to 200; you know, if Texas and California look alike in a lot of ways, and we have completely different numbers.

Mr. SIMON. I think that is right, and that is one, as I mentioned in my testimony, the Secretary intends to call later this fall when we get the latest numbers in from this round of testing. This will be the first year every State will have tested all their grades. We want to get the States in and get not only N size but a number of other factors. We want to look at confidence intervals.

Mr. MILLER. Right now, under current law, you can talk to the States all you want, but under current law, what triggers the events that lead—you know, we need to call schools in need of im-

provement because, in theory, the Federal Government is going to ride to the rescue with some offerings that are available to the students and to the families, maybe this year for the first time with some revenues to those schools that are in need of improvement so that they can work their way out of it. But if they are never triggered, if they never show up on the scale, where do these students go to get that kind of help?

Mr. SIMON. Again, we think we have had a pretty good balance in what we have approved and what we haven't approved, knowing it has got to be looked at again.

Mr. MILLER. These are stunning numbers of students that are excluded. And even if you want to say, well, they are counted in another way, they are counted in another category, they are economically disadvantaged or some other fashion, that still leaves schools where the fact is the N number has excluded students because they are not counted even if you try to put them in multiple boxes. I mean, that is——

Mr. SIMON. Yes, sir. We are totally in agreement. That is why we, again, think it is important to take another look at N size, and we have, and we are this year.

Mr. MILLER. If I just might, Mr. Chairman, when you say you are taking another look at it, you are taking another look at it in what fashion?

Mr. SIMON. In the sense that we intend to get the States together and reexamine, have each one of them reexamine each one of their N sizes as well as other measures they are using and justify to us now that we are testing more. We are 3 years into the law, justify to us in a way that we didn't require in the early days as to why you still need an N size of whatever.

Mr. MILLER. There is a lot of rationales why schools or States say they need these N sizes. I guess, Mr. Peiffer, we will hold you up as a model here until someone—but I assume you have large schools, suburban—you have metropolitan-area schools that are of substantial size, if I am familiar with Maryland. You have some rural schools.

Mr. PEIFFER. Yes, sir.

Mr. MILLER. You have some rural schools that are relatively small. You have schools that are heavily impacted by minorities. You have schools that are a majority minority.

Mr. PEIFFER. Yes.

Mr. MILLER. You have English learner schools, ad I have been out in some of the areas of Maryland; that is growing.

Mr. PEIFFER. That is correct.

Mr. MILLER. And yet the N sizes remain to be five with this, with some kind of index.

Mr. PEIFFER. Yes, sir. To all schools.

Mr. MILLER. I think, you know, that starts to look like the threshold that you may have to start working back from. I am assuming the validity there, because Mr. Brittain makes a fundamental point, you know, about this because now we are into—we are into the question of equal protection, and whether or not we have used an arbitrary standard to do this. You know, I think that No Child Left Behind—I am very proud of it because the fact is, you know, for the first time ever, we have legislatively made a com-

mitment to educate every child to perform proficiently. But recognizing the gap that existed and the deficiencies that existed, we set in a series of triggers that would yield additional help to those students and to their families, and that is being shortstopped by what in many instances appears to be an arbitrary setting of this inside that excludes these students from being counted. My time is up, and I see you reaching for the gavel. Thank you.

Mr. OSBORNE. Thank you, Mr. Miller.

I would yield myself time to ask questions. I think I was next in order here. The only comment I would have is that I used to teach statistics. And a five, it is pretty hard to get any kind of significance; if one person fails, that is 20 percent, and in 20, one person fails, that is 5 percent. So I guess I would be interested, Dr. Peiffer, in just asking you how you find any statistical significance in using an N as small as five.

Mr. PEIFFER. The statistic actually changes as you get closer to the 100 percent target in 2014. And it is by the nature—it is a statistics course beyond the one I took when I was in college. If you look at each year between now and 2014, the assistance that a school might get with an N-5 will become smaller and smaller until it will actually become zero because the fact is, the goal in 2014 is to have 100 percent of the kids proficient, period. There really wouldn't be any margin around that.

Mr. OSBORNE. OK. I am not sure I totally understand that, but I accept it as being well reasoned, and somebody smarter than I must have worked on it.

Mr. Brittain, you made a very interesting comment. You said that No Child Left Behind leaves two choices, either you have to improve education or you have to lower the bar.

And I just wondered what your assessment was? Do you feel that a large number of States have indeed lowered the bar? And do you feel that, from your perspective, that most States have made an honest good-faith attempt, or just what perception do you have of how things are being implemented.

Mr. BRITTAIN. In my written testimony, Congressman Osborne, I do point to a law review article by one of my colleagues, Jim Ryan, who has studied the States and their determination of their testing standard. Some, such as I believe Georgia, have just increased their standard. Others have lowered their standards. Just like the N factor is the discretion given to States to comply, .we would hope that a more full investigation of what are our State standards would be made, and like the N factor, there would be some effort to try to establish insofar as the standards meet a minimum standard. And there are good States, like on the N factor, and not so good States. And there are good States on setting good rigorous standards, and there are some not so good States. And that is one of the unintended consequences of No Child Left Behind.

Mr. OSBORNE. So what you are saying, it is rather mixed as far as your perception?

Mr. BRITTAIN. Yes, and a continuation of the statement made by Congressman Miller with some of the inequality and unevenness and some of the lack of standards and arbitrariness in setting these minimum standards.

Mr. OSBORNE. Certainly no one wants to look bad. It is sort of a fundamental factor of human nature.

And so we understand that.

Seems like the one opportunity to have some universal assessment is the NAEP test, and yet I realize that many States resist a national standard. They say, well, we are unique; we are somewhat different.

And I guess a question to any or all of you is, do you feel that the nuclear NAEP is being used correctly or that it should be relied on more or that the principle of allowing each State to have quite a bit of discretion is working? Because, as you know, some type of a national standard would certainly circumvent some of the problems that you have already pointed out. So you have about a minute left, so if you want to make a quick comment, I would appreciate it.

Mr. SIMON. From my perspective, from our perspective, we think the NAEP is very important. It does set a benchmark against which all States can be measured.

But I think also Congress is wise in allowing individual States to set their own standards. That is what education is about. It is a State function. We can't do that from Washington, D.C.

NAEP is good in that it is a watchdog if you will on State standards and State performance. When you compare proficiency levels, grade levels in the individual States, they vary quite a bit. NAEP is the one standard that you can get back to. They can work in harmony with one another. You have to understand; they are different. NAEP is different from a State test. But I think it is a good benchmark upon which we can look at the whole country.

Mr. OSBORNE. So would you suggest that if a State is by their own assessment performing very well but by NAEP standards not performing well, that some adjustment should be made?

Mr. SIMON. I think it is a good basis for conversation within the State. I think if I were a citizen in the State with a child in the schools, I would be asking, why is that so? And do you in fact expect less from my child?

Mr. OSBORNE. From the standpoint of your Department, do you feel this would be a wise tool to begin to use?

Mr. SIMON. Again, I think NAEP was designed for a specific purpose. When we talk about proficiency on NAEP, we are not talking about grade level in a sense. It was a very—it is a high expectation exam. So I think we would have to really go back and look at why we have NAEP and what the real mission of No Child Left Behind is, but I think there is certainly a role for both State exams and NAEP in this process.

Mr. OSBORNE. Thank you, my time is up. I would like to hear from all of you on that, but I don't have time. So at this time, I would yield to Mr. Kildee.

Mr. KILDEE. I thank you, Mr. Chairman. The concept of the N size was created to ensure the reliability of the data and also to protect the privacy of the students.

Unfortunately, this has created a loophole that can prevent us from really knowing why and how many low-income students or minority students and students with disabilities are struggling in school.

Without the disaggregation of data, we are really blind in addressing the problems of subgroups, and this was not exactly a brand new idea when we passed this bill because the previous reauthorization—and I was chairman then—we had disaggregation of data at that time in 1993. So it wasn't something that was just thrown upon you that you couldn't get used to. It has been a part of the Federal law, tightened up of course, and in the last No Child Left Behind was dating back to 1993. So there has been some experience with this.

Let me ask you this, how can we maintain a meaningful disaggregation of data and still protect the privacy of students, which was one of the reasons we put this in, and also still identify, as Mr. Brittain has pointed out, the schools that need some special help? How can we achieve both, all three of those. I will address that to——

Mr. SIMON. I think the Secretary's intention of gathering together the States to re-examine their plans, and when we say gather the States, we mean also to bring in psychometricians, statisticians that understand what reliability and validity are about, to understand how that is measured, to examine every State with those experts, to re-examine what, for example, their N size—that is one of the things we are talking about, but also in conjunction with their use of competence interval, their use of standard measures, their use of other statistical measures, to get some professionals that can relook at this now. In view of the fact we have more kids being tested now, what was appropriate in 2003 for an N size school in Michigan may not be appropriate any more because Michigan is not testing the same number of children. It is testing more children than it was in 2003, what was reliable, what was necessary for validity and reliability then may or may not be appropriate now. And so I think that is why it is important to re-examine it, re-examine it with some professional assistance, and then require some type of justification for a State to say it wants an N size of X.

Mr. KILDEE. It seems that, initially, when the States were setting their N size, there was great flexibility and, even from your Department, a certain laissez-faire as they set their N size, but now there is a greater rigidity when it comes to changing their N size. Am I characterizing that correctly?

Mr. SIMON. Yes, sir. And I as I mentioned in my testimony, not because of the personnel that are there but because of experience. We are a lot smarter now than we were in 2003.

Mr. KILDEE. I notice Michigan recently asked that their N size be increased from 30 or 1 to 30 plus 10, and you turned that down. Have you changed that many States within the past year, their N size?

Mr. SIMON. Within the past year, we have had 10 requests for changes. We have only granted one, and that was to get the N sizes consistent among various subgroups.

Mr. KILDEE. All right. All right. Is there any way that we could have a better objective, Federal norm or at least some guidelines as to the N size because, as I said initially, they are all over the lot, wide disparities from one State to another? Is there any way

we can establish some guidelines if not a norm for the N size for the various States?

Mr. SIMON. I think that is what we hope will come out of our discussions later on this year with the chiefs, with the States, with their accountability directors and with professionals in measurement, is to give us some data that we can give you to help inform you when you make those decisions.

Mr. KILDEE. Keep in mind the three reasons. One is disaggregation of data. One is to protect the privacy of the students. And the other is to make sure we give special help to those schools who really are not performing as they should. Keep those three objectives in mind.

Thank you very much.

Mr. OSBORNE. Thank you, Mr. Kildee.

Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

I would like to focus with Dr. Kuhlman on specifically the students with disabilities. My child is a student that went through 12 years of public school considered to be disabled. And can you discuss with me, over on your chart, it looks like—let me just ask you a few questions. In 2003 and 2004, under the reading and language arts, you had 17 students classified as students with disabilities.

And then in 2005, 23. And then in 2006, 26. Was that an actual jump in the student population of students with disabilities, or was that reclassification of other students?

Dr. KUHLMAN. No, it was an increase over those 3 years.

Mr. MARCHANT. And do you find, does your State give any kind of a waiver for students with disabilities in their testing?

Dr. KUHLMAN. There is no waiver on testing the students that we have. We have students who are mildly disabled with speech and language disorders, learning disabilities, behavior disorders and health impairments in that group. And all of our special ed students are tested. There is no waiver.

Mr. MARCHANT. So they are not taken out of the equation in any way?

Dr. KUHLMAN. No. Now, we are not legally mandated under No Child Left Behind to make AYP with the group because it is such a small subgroup, just the topic we are talking about today. But at our school, we took that seriously. When we saw our other two subgroups—and you can see on the same chart—performing in 2003 and 204 in the 90 percent proficiency level, and special ed students down in the 40's and 50's, that is where we said we were grateful for the reporting because while we analyze data on an individual student-by-student basis, we didn't group students, so the fact that data were reported for those students was helpful to us in knowing that we really needed to make some changes and focus on improvements for our students with disabilities.

I was a special ed teacher, so it was important to me that at our school we not have significant gaps with students with disabilities.

Mr. MARCHANT. In Texas, we have had a lot of situations where many of our schools that for years were rated exemplary in this last testing cycle lost their rating primarily because they included, they took more of an inclusive testing policy and then, when they were stripped of their exemplary status, went back and appealed

to the State. And their appeal basically was based largely on the fact that they had included too many disabled students. And the State didn't allow them to pull those students back out and restore their exemplary status. Would you say that is generally the policy with most States?

This is for the panel.

Are most States moving toward Dr. Kuhlman's model, or are most States living with what they are able to do as far as that goes?

Mr. Peiffer.

Mr. PEIFFER. I can only speak for Maryland. We work very hard to make sure that all of our students with disabilities are included in the accountability and assessment program. We have an assessment for the lowest 1 percent of students who are very seriously disabled and alternative assessment. We are waiting for guidance from the U.S. Department of Education on another assessment that will be called a modified assessment that will be more in tune to the needs of the next 2 percent of students above that.

And I think the key with all of the limited English students and the special education students both, if they are they are to be included in adequate yearly progress, we need to make sure that the tests we have in place for those students are a fair and accurate measure of what they know and are able to do. But we are very much committed to making sure that those students are included.

Mr. MARCHANT. And, Mr. Simon, what is the goal of the Department of Education along these lines?

Mr. SIMON. This particular issue is probably if not the single most issue that is discussed and considered most by the States, it is in the top two. And we have done a lot. I think States are really moving to get students with disabilities included appropriately in assessment and in teaching. Many times, they don't know what to do. And so we intend, in addition to releasing rules and regulations, we intend to release technical assistance to help States understand how we can identify these students properly, how to test them properly, how to teach them properly.

Mr. MARCHANT. Thank you, Mr. Chairman.

Mr. OSBORNE. Thank you, Mr. Marchant.

Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman.

I would like to thank the panel and thank the chairman for the hearing. I think it is imperative that the result of the No Child Left Behind be that we find more creative ways to educate students, not more creative ways to create records to show that we are educating students when we are not.

And I think that this size of the N issue sounds very arcane, but it isn't. It is very fundamental and very serious about whether we are going to take these obligations seriously. And I am glad we are having this hearing.

There is another part of this equation, and it is whether or not the resources that we are sending from the Federal taxpayers are being properly applied to meeting the needs of the children in the schools, and I wanted to ask Secretary Simons some questions about some issues I called to the attention of Secretary Spellings in April.

First, I want to say, we have had some excellent responses from Secretary Spellings' legislative staff. Ms. West in particular has been quite attentive in getting back to us. But we still haven't gotten to the bottom of the question I asked Mr. Secretary, and here is what it is: Based on news reports, which of course means that it may or may not be true, but based on news reports, there were—the following three issues were called to my attention. In the Columbus, Ohio, public schools, we had No Child Left Behind money spent on cell phones, $23,000 worth; a $1.2 million increase in overtime spending; and we had $47,000 spent on furniture the district could not locate when it was audited.

In Cottonwood, Arizona, $1.1 million was spent over a 13-month period on after-school programs. I am told that programs of this nature typically are very low budget, cost about $300 per student. This one averaged out to $4,900 per student.

And in New Jersey, in my own State, in the city of Elizabeth, which has six schools on the needs improvement list, it is reported that the school board spent $600,000 in a buyout for a school administrator, some of which may have come from No Child Left Behind money, and then over $100,000 on television advertising in a dispute with the city government over where to build a new school under the State's school construction program, a political dispute about where the school ought to be built.

I don't know if these things are true. But I would like to know if they are true. And more importantly, I would like to know what strategy the Department has to focus on this.

And I will tell you why I think this is particularly important. The principle change between No Child Left Behind and the prevailing law was that we were going to tether this Federal money to very specific performance standards and objectives. When Title I started, as you know, we said, here, here is a sum of money, do good things with it. And then, in 2000, the Goals 2000 legislation—I guess it was prior to that—we said, do good things with the money, here is what we would like you to accomplish. And when that was not accomplished, in No Child Left Behind we said, here is a large sum of money, here is what you need to accomplish, here is how we are going to measure your achievement, and here are the series of remedial actions you must take in order to make these changes happen, which is the whole genesis of AYP.

You can't really measure that progress unless you are sure the money is going to the things that it ought to go to, and I got to tell you, not only are children in these districts being cheated when they are not being counted, but they are also being cheated when money the Federal taxpayers are sending for after-school programs and reading tutors and preschool and summer school are being spent on cell phones and political advertising campaigns and furniture that can't be found.

So what are we doing about that?

Mr. SIMON. Yes, sir. Thank you.

And we did receive your letter, and quite frankly, we have had a number of individuals working on that. Those audits that you referenced were not a result of our audits. So we are trying to track down who did the audits, the source of their information and then where that information goes.

We audit from the Department of Education through Title I. We audit States and then, within States, selected school districts. And we have never pretended to audit every school district in the United States. So, short of that, we work with the States.

Now that having been said, every individual district, I am sure this is true in every State, it certainly is in my State, has to do an annual audit, which is, I am assuming that is where this information was found. Part of an annual audit at the district level includes auditing Federal funds. That information generally is sent to the State department for the State department to look at. It is also sent to legislative committees to investigate. I know, many times again in my State, there were numerous occasions where superintendents were called before legislative committees to talk about audits of Federal funds as well as State funds.

If we determine through whatever source that there is a miss, it has been an abuse of Federal funds, and certainly we get involved in that. We will work through the State department in conjunction with them to see what is necessary, if the facts are there, if they are true and then how we might go about recovering those funds. We just haven't gotten to the bottom, totally, of everything you have asked us to do, but we are certainly pursuing that.

Mr. ANDREWS. If I may, can you tell me when we will have an answer?

Mr. SIMON. Sir, I can't tell you for sure. But I will get an answer to you this afternoon. I have not been working directly on that. But my staff has.

Mr. ANDREWS. I want to make it very clear, your staff has been very responsive to this. I know my time is up. I want to say one more thing. This is more than just about these three districts. See, my experience in local government has been that Federal money is treated as a little freer than money raised from the taxpayers that are sitting right in front of you. And there is a tendency for districts to, certainly not all districts, but districts that have a bent toward this kind of carelessness to begin with to be even more careless with Federal money.

And frankly, the ability of State education departments varies. There are some that are very competent and very thorough in their audits, and there are others less thorough. But every single one of those dollars that is being spent in Arizona or Ohio or New Jersey is being raised by my taxpayers in New Jersey, Mr. Kildee's taxpayers in Michigan, Mr. Osborne's taxpayers in Nebraska. And we think we have a very special obligation, not only to the taxpayers but to the children who are being cheated if these allegations are true. I thank you.

Mr. OSBORNE. I thank the gentleman.

Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman.

It is good to hear that every single member up here agrees that it is important for schools and parents and the public to have access to disaggregated data on student achievement.

What I would like to ask each of you, and starting at the with Mr. Brittain, is, tell me one of or tell me the most important way that this information can be used to help students? Particularly the

students that aren't measuring up, meeting their AYP, what would be the most important way you have used this information?

Mr. BRITTAIN. I would use the information that you provide them with special services to help them meet their level of achievement, their level of progress and ultimately to find the highest level of their proficiency. I believe that is the most important way that, particularly if you are talking about the excluded students, they are not being helped.

And from a civil rights perspective, I think that the parents and the students deserve to be informed of all of their rights under No Child Left Behind. And certainly, they should be informed that, if their school has finally been designated by the long process of not performing, they should be entitled to their transfer right under this.

One of the proposals we make, Congresslady Woolsey, is that, for the excluded students who are not counted in the N factor, they should receive their remedial measures no less. That would go to Congressman Miller's point of view that they are being denied their rights of No Child Left Behind as well as being excluded from the data. So we would say as one fix that if you are going to exclude them from the data, you know who they are, you have their testing information, you still go and provide them with their remedial right.

Dr. KUHLMAN. At Centennial Place, we have made AYP for 6 consecutive years, so we haven't been subject to any of the sanctions under No Child Left Behind. But we have found the data and the disaggregation of data that is presented to us to be very helpful in informing instruction, in planning additional resources for students that need additional help, just as I explained with the students who have disabilities. We were really able to focus on intensifying collaboration among teachers and parents, and really narrowing the scope of our curriculum and standards and going deeper with those kids in the program so that they were able to perform more satisfactorily. So I think that the actual presentation of data really helps schools zero in, whether they are subject to sanctions or not, in terms of making substantive improvements in the instructional process.

Ms. WOOLSEY. Dr. Peiffer.

Mr. PEIFFER. Disaggregated data is used pervasively throughout Maryland from the school system on down. Of course, at the State level, we look at that to help us determine whether we are putting our efforts in the right systems and groups and so on.

But at the school system level, quite frequently, they are looking at the principal assignments to make sure that they are going into—the right principal is going into the right schools. I met with the assistant superintendents for instruction from our 24 school systems back in March. And they talked at great length about how they are working with principals so they are smarter about looking at the data so they can make good instruction for students. So they are trying to do it, institutionalize that approach.

So if you think about, for most of our schools, they know that AYP is important. They know the performance of those individual students is important. So it really overrides almost every other factor in terms of making decisions at the school and system level.

Ms. WOOLSEY. Dr. Simon, from your perspective?

Mr. SIMON. I have to agree, when the individual test result and individual teaching data about those kids gets into the hands of the individual teacher to help that child, regardless of whether that child is in subgroup 1, 2 or 3, it all goes back to what that teacher knows about that child and what he or she is able to do with that child in the classroom and to be able to focus what that child needs.

Ms. WOOLSEY. I would like to ask you, the President has repeatedly underfunded No Child Left Behind in his budget. Does the administration and does the Department think that we don't need any additional funding for these services?

Mr. SIMON. If you look back on the history of No Child Left Behind, there are record amounts of Federal funds that have gone into assisting schools and teachers. Teachers become better teachers. Schools become better schools. We believe that money has been well spent. It is showing up in increased achievement.

Ms. WOOLSEY. So you think that is enough. I mean, we don't need any more than what is on the table now?

Mr. SIMON. I think the Federal Government has been very generous in its funding of education and being good partners with States.

Ms. WOOLSEY. Well, I disagree with you on that one.

Thank you.

Mr. OSBORNE. Thank you, Ms. Woolsey.

Ms. McCollum.

Ms. MCCOLLUM OF MINNESOTA. Thank you, Mr. Chairman.

I was just going to comment, a person who assisted me on my education policy is a Minnesota State auditor. Just in complying in 1 year, we spent $19 million getting the tests all straightened out for No Child Left Behind, so I was wondering if the State of Minnesota had received $19 million from the Federal Government to offset that, and I think the answer is, no.

So any achievement we have done in Minnesota, I would say that we have done it with Minnesota's taxpayers' dollars.

I am glad we are having this discussion because I am very concerned about, what are we measuring?

Every State has its own standard. You say you are going to look at the national standard, the NAEP, and juggle some formula and bring the schools in or the States in and say, well, maybe you should be changing your standards here or there so we have something that we can measure.

All the cell sizes are different.

And we need to be doing much better than this. We are all adults here in the room. We all know when we show up to work, and we are measured on performance, or when we purchase something. We don't let every State set standard performance for cars. We know, when we purchase a car, how reliable it is going to be, what the gas mileage is going to be like. But yet when it comes to our schools, we seem to think that we can do whatever.

Now you can make your point for the Department that it is a State's right to provide an education. And I agree with that. It is in Minnesota's State constitution. But what is happening right now is, because Minnesota has its standards, and you point out that

some States have higher standards than others in some of the testimony, then nationally, when we go to rank these schools and they are up next to each other, there isn't a big asterisk next to it saying, oh and by the way, these States did lower the bar, and they still have students that aren't making adequate yearly progress. And those students who aren't making adequate yearly progress might be the students that are in, especially in minority categories, scoring at the top of a bar in another State. So what have we really done for those children?

If this is to be a Federal program, then I think we need to move toward a standard Federal system in measuring our outcomes here.

I say that because we have—we are a very mobile society. We have Hispanic immigrant students that we are going to be trying to measure. That is pointed out in testimony. And so I would like a little more of a discussion about how do we get to one measuring bar. And then, just to point out, if we have special ed students that aren't making adequate yearly progress, shame on the Federal Government for not funding special ed for how many years? We have failed to do that. What makes us think we are going to be more, have more success with No Child Left Behind without the appropriate funding for that?

And then I am just curious, when the Department looks at African-American students right now, black students, how are refugees being counted? And what are we going to do about school districts that have a lot of, a large refugee population, that are not only dealing with language, but they are dealing with culture shock and, in Minnesota, even with weather shock in the winter.

So how, especially in my State, when Asian and black students are counted, how are we counting? And what is the Department doing for refugee students and making sure that, as our country takes in these refugees, that our school districts gets the funding that they need to make these refugees successful?

Mr. SIMON. In terms of the last issue you raised, limited English proficient students, that is a subcategory that is required as a subgroup both for reporting and accountability. We work with the schools. We have a specific office, Office of English Language Acquisition, that works with States. There are regulations in place that talk to a State about how these students can be treated for adequate yearly progress, schools are given, under proposed regs that being written now, are basically being given a year for those students to come in where they are not held accountable for assessments. But there are requirements for those children to be tested for their limited English language proficiency. There are opportunities with assessment and teaching for those students to hopefully exit that category as soon as they can properly participate in testing.

We give them credit for moving students out of those categories. Our objective is to get those students into a regular classroom as soon as possible. We want to give States credit for their doing that.

So and we are continuing to work with States to improve assessment of these children. That has been one of the big concerns that States have had is how they test these children to really understand the level of their language proficiency and their ability to participate in English and math exams. And so it is a continuous

thing we are working on. I think, again, we are smarter today than we were 3 years ago. I think those children are being better served than they were 3 years ago.

Mr. MARCHANT [presiding]. Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, sir. I thank everybody for their testimony. I think it has been really interesting for the majority of us.

Dr. Kuhlman, I just want to ask a quick question, with the resources that you receive, not only from the Federal Government and from your private corporations that are in a partnership with you, then on the State level, the amount of money that you are getting, would you say that you are actually receiving more money for your school than maybe the average minority school would be getting?

Dr. KUHLMAN. No, we are funded under the same formula that all Atlanta public schools are funded. We actually have a lower free and reduced lunch rate than the average Atlanta public school, so we get a little bit, proportionately, less in Title I.

And our resources in the community are in kind resources, not dollars. But I will say that the value is enormous. And that would be my statement, that all kids need these resources that our kids have been so able to benefit from, and encouragement to community members and organizations to get involved in their public school and to help and to public schools to reach out and bring the community into the schools so that they can help.

Mrs. MCCARTHY. Well, I thank you, and it sounds like your school has the winning formula. With that, I would like to yield the balance of my time to Mr. Miller.

Mr. MILLER. Thank you very much, and if I might just thank the gentleman for yielding. I would like to pick up on the conversation with Mr. Kildee.

We have tried to be very supportive of the Secretary as the Secretary has tried to walk through the competing demands from the law of the States and everybody involved in it. But, and I recognize that the Secretary inherited some of these N number decisions that were made, and that starts to be the benchmark from which you then have to work from.

But I think if we are right in that this determination, as presented by Mr. Brittain, is about whether or not students will or will not get the services that are required and provided for under Federal law, that the only way out of this is to really put together an independent objective technical committee to look at this. And I would invite the civil rights community into that because if this is accurate—and I think it is accurate—it does go to whether or not these children will have an opportunity to be proficient or not.

But I think that, as you were suggesting that you are trying to do something like that, I don't think this can be a case-by-case basis any longer because, if nothing else, for the moment, I think Maryland just knocks that out of the box. And again, I am not suggesting that that is the answer. But I think that—I would hope that the Secretary would think long and hard about putting together that kind of technical committee to decide what makes sense and what doesn't make sense and what can be justified here when you recognize that it will end up essentially being about

whether significant numbers of students are denied access to those resources.

So I just want to say that.

I was also looking at an old friend of mine, Hayes Mizell, who has been involved in these issues for some time back in 2003, sent me a speech that he gave in Maryland to the Howard County Schools' Faulkner Ridge Staff Development Center in Columbia. And in that he was talking, he was trying to get people to think anew with No Child Left Behind. But he went back to a very old point, and he quoted a talk about Brown v. Board of Education; he quoted, Louisiana's abysmal performance on African-American students prompted a member of the State board of education of Louisiana to say, we will never reach our goals as a State if we don't improve the performance of our poor and black students. And if we don't measure it, then you don't count it. And if you don't count it, then you don't pay attention. And if you don't pay attention, then you don't fix it.

And I want to say that I probably heard that from the President of the United States a dozen times while we were putting together No Child Left Behind. And the Secretary has said it I think many, many more times than that. When people want to challenge standards and accountability and all that flows from that. And my worry is—I am not suggesting intentionally—but we have created a group of students here who may very well not be counted and therefore may not be paid attention to and therefore may not receive the services.

So, I would hope that your—I don't want to hold you to saying this is what you are going to do, but I would hope that this would blossom into a really independent technical look at how you develop what may be a rational decision that in some cases some of these school scores may not need to count, and if that is even the case, how do you still then make sure that services get to those children that the law says that they must get? And I think it is a two-part question.

Hopefully there won't be many in the second part of the question if we do the N number right. But I think it has to be there as a fall back, as Mr. Brittain has suggested, because we know, for a child to lose this opportunity in just a school-year period of time, the problems start to cascade on themselves. That is why we have testing at this level and we have the development of these scores and we have this information, this disaggregated data, so we can get in there and deal with these problems in a realtime basis. So I just wanted to hopefully expand a little bit on that question by Mr. Kildee and your response to it and my suggestion to your response to it. Thank you.

Thank you for yielding.

Mr. MARCHANT. Mrs. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you all for being here.

I wanted to raise one issue that we haven't talked about so much in the potential loopholes that are out there. Could you please address the issues of when students are counted, as per their, how long they have been in the school? And it is my understanding that schools don't necessarily have to count for AYP until they have been in the school for half a year, some schools almost a full year.

What is your feeling about that? Is that something that we ought to be addressing? And how do we sort that out if in fact not only are students not being counted if the N size is too small, but our transfer students who move around a great deal. Certainly our students who are on military bases move around a great deal, and generally speaking, children who have fewer advantages move around more than children who are more stable. So how do we reconcile all that? What do you think we should be doing?

Mr. SIMON. The accountability from No Child Left Behind is at the school level. So when we talk about a school needing an improvement, we want to say that that school is unable for whatever reason to get their children to grade level. So part of the protection, if you will, or the fairness to the school is that they be judged on children they have had an opportunity to teach.

And so the law provides that a child that is held for adequate yearly progressive purposes must have been in that school for a full academic year. Now that is defined somewhat by the States. Some may start their full academic year October one, some may start it September one. But basically, the child must be in that school a year.

Now a district, however, if a child moves from school A to school B within a district, the district is held accountable if that child has been in the district a year even though the school might not be, if he was in one school 3 months and another school 6 months, the schools may not be held accountable, but the districts would be. Similarly, within a State, if a child moves within a State, the State is responsible.

That having been said, I go back to Principal Kuhlman and what they are doing in her school. It doesn't matter whether the child has been there 2 days or 2 years or 2 months. They pay attention to what the child knows and does not know, because they look at the data that child brings with them, they look at data they accumulate on that child when they are in school. That is what is going to teach kids. Accountability is important, and it will help direct funds to schools that need to be helped. But all that accountability is worthless if the classroom teacher doesn't have the tools and the knowledge and the desire to really pay attention and help that kid. That is where the real work gets done.

Mrs. DAVIS OF CALIFORNIA. I would agree with you, but I am just wondering, again, in a dialog fashion, if in fact the schools are not truly held accountable for those children who move a lot, then doesn't that send a different message to them? I know that, years ago, we did disaggregate and we did believe that even though a school might have a transiency rate of 150 percent in terms of turnover, the school was always accountable for those kids. And I hear what you are saying, that the teachers still have that responsibility. But I am just wondering whether we ought to look at that, whether that is somehow giving a pass for those youngsters.

Dr. Kuhlman.

Dr. KUHLMAN. I would say that our superintendent in Atlanta public schools agrees with you. We have targets that are established for us, school by school. And we include every child in those targets. If they arrive the day of the test, they are counted in our accountability system. So sometimes it is, you know, you take a lit-

tle hurt on that. And I always think that in terms of the real substance of our instruction, those children that have been there for a full academic year have had the opportunity to benefit our program. But at the end of the day, we are accountable for all of the students.

Mrs. DAVIS OF CALIFORNIA. Should that be a separate N size, students who have been at the school for half a year opposed to a full year, should they be pulled out in some way?

Dr. KUHLMAN. It would be interesting to look at them separately, and we do that. And frankly, we don't have a lot of difference. Now I think that—I know that would vary from school to school, too.

Mrs. DAVIS OF CALIFORNIA. When it comes to military students, do you think that in any way those scores should be looked at any differently? Is there any interest in doing that and enough studies to indicate that, in fact, there may be services beyond that impact that the young people are not receiving?

Mr. SIMON. I had the privilege of visiting a military school in Germany a few weeks ago. And the military schools overseas are not under No Child left Behind. The law doesn't apply to them. That have been having been said, they have adopted voluntarily many of the provisions of No Child Left Behind. And I can tell you, we need to model many of our schools after what the military schools do for their children. And it starts with the key for them is the family being involved. As the commander of the base we were at said, when a child gets in trouble at school, it is not just the child; the father and the mother whoever is in the military is brought before the commanding officer, and the child is, their progress is talked about. Some good things, and they are certainly interested in maintaining a consistency as their children move from school to school.

Mrs. DAVIS OF CALIFORNIA. Thank you. I appreciate that. My time is up.

I really was asking more about those children who are identified but are not in military schools, are in the regular school system, where they are receiving impact aid and there may be some additional issues regarding accurate testing. Thank you very much, I appreciate it.

Mr. MARCHANT. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Secretary Simon, is there any technical difficulty to collecting all of the data without any regard to N size?

Mr. SIMON. I am not sure if I fully understand your question, but there is a problem in collecting data. States are getting better. When we began No Child Left Behind, the data collection systems in many of our States were very inadequate to meet the reporting requirements of the law.

Mr. SCOTT. I am not talking about reporting. I am talking about just collecting the data. Then, you could decide what to report, is the second question, but you can collect the data regardless of N size, isn't that right?

Mr. SIMON. Oh, sure, now, but again, the format of the data, the quality of the data is a lot better today than it was 3 years ago, and so we are beginning to collect more and more information. We know a whole lot more now.

Mr. SCOTT. One of the problems is, if you are under the level now, the N size in each school, you could have thousands of children in a school district but not enough in any school, and none of them get counted; isn't that right?

Mr. SIMON. Yes.

Mr. SCOTT. Is there any rationale or basis for having a different N size for one school district or one State than another?

Mr. SIMON. Again, we believe there is. And that is what we have tried to exercise since the beginning of No Child Left Behind by taking into account a number of factors. But we haven't set one N size for everybody.

Mr. SCOTT. Do you have those factors listed somewhere?

Mr. SIMON. Yes, sir.

Mr. SCOTT. If you could supply that to the committee.

Now the testing is one thing. The farmers tell us you don't fatten the pig by weighing the pig. We want to know what happens after the test is given. And what do you do with information? Now if you know in a district, in a school district, that there are a number of children failing but not the critical mass in each school, it is my understanding that all of the sanctions are school-based not school-district-based?

Mr. SIMON. There are sanctions at the school and district level.

Mr. SCOTT. Now if you have say 200 students, none of whom have been counted in any particular school, who you have identified as that category as being left behind, are there services that could be provided for them?

Mr. SIMON. Yes, sir. Also, those schools, if the individual schools, if the child is not counted at the individual school because of N size, very likely they are going to be counted at a district level. And if the district puts in an improvement, that also triggers funding and requirements that the district has to provide to the schools that got them there.

Mr. SCOTT. So if you have one or two students in each school in a particular category, not enough in any school, then you can provide services to those students?

Mr. SIMON. Yes, sir, and it would certainly behoove a district to do that because if the schools are not taken care of, then the district remains in improvement and the sanctions get quite intense.

Mr. SCOTT. So you have a category where the district fails because a category of students fail, but no individual school is implicated?

Mr. SIMON. Correct.

Mr. SCOTT. Now, the other things that we can do with the data, has any—we want fully qualified teachers. The data could show that a particular teacher has a historic inability to teach certain categories of students.

If you found that, would that jeopardize the teacher's qualifications?

Mr. SIMON. Not from a Federal perspective. We don't get that detailed in a school's business, but the whole issue of how to qualify teachers is one that is front and center of this issue, is also the line for States to get their teachers highly qualified.

Mr. SCOTT. Would you encourage school districts to know if a teacher isn't teaching, say, black students?

Mr. SIMON. Absolutely, and they are required to report that.

Mr. SCOTT. They are required to report that for a teacher?

Mr. SIMON. For a school, the number of teachers and individual teachers, if a individual teacher is not highly qualified, the students of that teacher, the school is required to report that to the parent.

Mr. SCOTT. Can you lose your highly qualified status if you are consistently failing to teach certain categories of students?

Mr. SIMON. That would be a State's obligation to do it. It is not a requirement from the Federal Government. We have a requirement that a teacher be highly qualified. Now once they are highly qualified, if they fail to perform, that is not something that we have ventured into very extensively. We do things to encourage that for those teachers not to be in there, but there is no penalty from the Federal Government at this point on that.

Mr. SCOTT. Does the disaggregated data identify the students that are dropping out by district?

Mr. SIMON. It is available particularly at the State and school district level.

Mr. SCOTT. Could you say a word about how you, what standard you used to determine whether or not disabled students are passing?

Mr. SIMON. Again, that goes back to the State's standard. The Federal Government, we have some regulations regarding the numbers and types of special education students that can be counted as proficient. There are limits that are set by the Federal Government, but, ultimately, it is up to an individual State's standards to a large degree.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MARCHANT. Mr. Holt.

Mr. HOLT. Thank you, Mr. Chairman.

I thank the witnesses. You have been patient, but of course, this is really important. It gets to the heart of No Child Left Behind. You know, we would like to say that no child is left behind, really, no child. Of course, we don't know if, in this school, there is five; and another school, there is 20; and another school, there is 50; and pretty soon, you have a couple of million students you don't know who are being left behind.

And it is not as some people have suggested a matter of mathematics or statistics. This is a philosophical point. And so a range between 5 and 200 is really not a mathematical decision. It is a choice that the school, that the State, the schools are making.

What I would like to ask, Mr. Peiffer, is if, what would you say you have had to sacrifice in order to maintain this small N of 5? You can either, well, make the assessments, the testing easier, so you lower the bar, and you can make it that way. Or you are willing to tolerate more schools just not making, not being perceived as making adequate progress, being classified as adequate progress schools.

What do you think a school system, or a State, gives up or has to give up to maintain as high of standards as you have?

Mr. PEIFFER. With our local school system officials, I think there is a lot of fear that if we had a very small N size that there would be an inordinate number of schools identified as not making ade-

quate yearly progress. We had to work very, very hard over the first couple years with this law to try to help local school system officials and parents and others in what it really meant. So, ultimately, I don't think we have had to give up anything. It is a combination of the N of 5; it has also been this competence interval statistic that gives this sense of fairness. And once we incorporated the two together, I think there has been a sense that it has been pretty fair.

Again, I think I mentioned in my earlier comments that the Education Week report that came out in January, looking at the 2005 AYP list, puts Maryland about in the middle of the country, about in or near the national average in terms of the number of schools that have made AYP. So I think it really hasn't disadvantaged us in any way. But most importantly with our constituency and our advocates for students with disabilities and limited English proficient students and their various racial groups and their parents, I think they also feel their students are appearing in results and we are paying attention to them. So I think the advantage to that has been very important to us.

Mr. HOLT. Do you think, Mr. Peiffer, if there were a national cap put on N, 30, 25, 50, you would still maintain 5?

Mr. PEIFFER. I don't see that there is a lot of interest right now in changing the N of 5, and it, strangely enough, I get approached in the grocery store by parents who seem to understand statistics enough that they understand the N of 5, so it has gotten to be a part of the culture with parents as well, so I think we are very comfortable with where it is.

Mr. HOLT. And, if it were, if there were a national standard set, a cap, what difference would it make to a State like you that sets, well, this rather high bar or low N?

Mr. PEIFFER. I am not quite sure how the standard would apply if it were higher than 5 and that were the standard applied elsewhere. I am not sure we would be—in other words, if that were the cap, that you needed to be under that certain figure, I think there would be a lot of pressure on the part of our local school systems to go to a higher number if you will.

Mr. HOLT. OK. Thank you.

I thank the witnesses.

I thank you, Mr. Chairman.

Mr. MARCHANT. I would like to thank the witnesses for their time and testimony, and the witnesses and the members for their participation today. It was a great panel. Thank you for bearing with us during our votes and the business of the House. If there is no further business, the committee stands adjourned.

[Whereupon, at 1:14 p.m., the committee was adjourned.]

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