



Colorado State Board of Education

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COLORADO DEPARTMENT OF EDUCATION COMMISSION
DENVER, COLORADO
April 14, 2016, Part 3

BE IT REMEMBERED THAT on April 14, 2016, the
above-entitled meeting was conducted at the Colorado
Department of Education, before the following Board
Members:

Steven Durham (R), Chairman
Angelika Schroeder (D), Vice Chairman
Valentina (Val) Flores (D)
Jane Goff (D)
Pam Mazanec (R)
Joyce Rankin (R)
Debora Scheffel (R)



1 CHAIRMAN DURHAM: Okay, let's start and
2 Elizabeth make sure either we do it on -- if we don't have
3 a chance to talk about -- conclude our conversation from
4 yesterday about the early childhood readiness waiver rules
5 and compliance with various parts of the statute. So we
6 need to need to have that with staff or if we have time to
7 do here. We are short of time and let me start by looking.

8 Okay. Well, the State Board will now
9 conduct a public rulemaking hearing for the rules the
10 administration of bullying and for prevention, an education
11 grant program. The Board voted to approve the notice of
12 rulemaking in its February meeting. The hearing to
13 promulgate these rules was made known through publication
14 of a public notice on March 10, 2016 through a caller
15 register and by State Board notice on April 6, 2016. The
16 State Board is authorized to promulgate these rules
17 pursuant to 22-2-107(1)(c) CRS.

18 We were now say Melissa Colzman and Scott
19 Ross who'll make a presentation. Before we start, let me
20 ask what are our legal obligations time wise if any, Mr.
21 Dill do you or Ms. Colzman, do you have any answer to my
22 question?

23 MR. DILL: I may have.

24 CHAIRMAN DURHAM: What sort of time frames
25 are we on and all that.



1 MR. DILL: I suspect we both do and
2 according to section 22-93-102(I), the State Board has 90
3 days. I believe it's 90 days after you get funding.

4 CHAIRMAN DURHAM: And we got funding when?

5 MS. COLSMAN: January 1st.

6 UNIDENTIFIED VOICE: Oh.

7 CHAIRMAN DURHAM: Is the funding in this
8 year's (inaudible) or last year (inaudible)?

9 MS. COLSMAN: It was in Prop BB, and so the
10 firm was funded January 1st. We have ongoing spending
11 authorities who were able to carry those funds.

12 CHAIRMAN DURHAM: If the firm was funded
13 January 1st because it -- let's say it would have to
14 appropriate the amount.

15 MS. COLSMAN: Right. That might be a good
16 question for Mr. Blanford.

17 CHAIRMAN DURHAM: So did they pass a bill to
18 appropriate the money?

19 MS. COLSMAN: Yes, they did. Yeah.

20 CHAIRMAN DURHAM: And this year?

21 MS. COLSMAN: No, it was a 15, 13, 67 in the
22 last session that authorized that.

23 CHAIRMAN DURHAM: So they appropriated money
24 prior to lawyer approval?

25 MS. COLSMAN: Contingent upon I'm assuming.



1 UNIDENTIFIED VOICE: Because there's --

2 CHAIRMAN DURHAM: Looks like you're pretty
3 good at this. Yeah. Okay. So 90 days so we're a little
4 behind. So are we, January, February, March.

5 MS. COLSMAN: Yeah.

6 CHAIRMAN DURHAM: Yes, close. All right and
7 I understand where one person to testify and I think we'll
8 take that first, Michelle Murphy. Ms. Murphy, how long are
9 your remarks?

10 MS. MURPHY: Oh. I'm waiting for you.

11 CHAIRMAN DURHAM: Perfect. Thanks.

12 MS. MURPHY: Can't believe you know me and
13 you're laughing about that.

14 UNIDENTIFIED VOICE: And do what.

15 MS. MURPHY: Good morning, Mr. Chairman and
16 Members of the State Board. My name is Michelle Murphy.
17 I'm the Executive Director of the Colorado Rural Schools
18 Alliance. I'm testifying today also on behalf of the
19 Colorado Association of School Boards, and the Colorado
20 Association of School Executives. Each of our
21 organizations were actively involved in the negotiations
22 leading to the adoption of House Bill 1254, the bullying
23 prevention legislation adopted in 2011.

24 I think I still wear some scars and I sure
25 learned a lot from those conversations. We're very glad



1 that the grant program has been funded finally. However,
2 we're concerned that in their current form, the rules
3 overemphasize accountability, exceeds statutory
4 requirements around what the application will look like,
5 around what the surveys should look like and what they're
6 reporting at the end of the grant period should look like.
7 We absolutely, and I listened this weekend to your last two
8 conversations around these rules.

9 I didn't have the opportunity to be in the
10 room, for either of those. We absolutely share your
11 concerns, about the effectiveness of bullying prevention
12 programs. A lot has changed since 2011 too. I don't even
13 think we call it 'bullying prevention' so much anymore, as
14 we call it creating positive school cultures and climates.
15 And those are right, we've changed the narrative because
16 talking about bullying wasn't effective.

17 We don't talk about what a bully is anymore,
18 we talk about, or there are more effective programs I'm
19 told. Talk about what a friend looks like, and how we do
20 treat people, and what kindness is. We know there are a
21 lot of programs out there that do not work. And we know
22 that there are some programs out there, that are having
23 more success. Where in the written comments lawyers far
24 smarter than I take issue and have great concern, with the
25 redefinition with the Board's authority, they're to



1 redefine bullying and or with concerns that it exceeds the
2 scope of your authority, and also that it will create
3 confusion to have a different definition for school
4 districts that are implementing grant programs pursuant to
5 state statute.

6 I don't want to spend my time having to
7 answer any questions about that.

8 I don't want to spend my time there, I know
9 you've been advised by your attorney in that regard. We do
10 believe that a better way to, or an effective way to
11 ensure, and that the statute provides for an effective way
12 to ensure that the districts implementing the grant
13 program, are implementing effective programs and that's
14 through that CDE website. This was a heavily negotiated
15 piece of legislation. Everybody involved understood that
16 our school districts particularly, our smaller rural
17 districts do not have the capacity, especially as compared
18 to the department, to go out there and identify best
19 practices and programs that are effective for our student
20 populations; for our varying student populations. And so,
21 the legislation was intentionally drafted to call on the
22 department to work with the School Safety Resource Center.
23 They do great work in this regard. They've
24 gotten a lot of grant funding to identify and build out
25 programs that work, to work with them, to work with school



1 districts, and to develop best practices. And we don't --
2 we believe that that website should be the definitive
3 resource on bullying prevention and promoting -- sorry lost
4 my -- lost track of myself. The website should be the
5 definitive resource on bullying prevention and
6 interventions in the state and should and could provide
7 critical resource and guidance on parent and student
8 engagement. Alternative funding sources and other
9 components critical to sustainable and effective
10 implementation in the field. The website should include
11 programs that have proven effective in urban areas, in
12 rural areas with high poverty demographic, within smaller
13 systems with limited resources.

14 Student populations are different, staffing
15 resources are different in schools, and the department
16 should be called upon to provide resources for a broad
17 array of circumstances. As stated in the written comments,
18 we believe the rules exceed the statutory requirements,
19 with regard to the grant application and annual reporting
20 requirements. The statute requires only that so within six
21 months after those grants are received, districts submit a
22 statement as to the effectiveness of the use of those
23 funds. Excuse me. We believe that these 'accountability
24 requirements' as I'll call them for lack of a better word -
25 -



1 CHAIRMAN DURHAM: Ms. Murphy, three minutes
2 was your allowed time you're substantial over that. Could
3 you wrap it up?

4 MS. MURPHY: Yeah. Because I spent a lot of
5 time fumbling. Absolutely, I think the biggest piece, and
6 something that wasn't highlighted in our written comments
7 is that the department, the rules don't apply for any
8 criteria and how the department's gonna determine how much
9 money, how the grant funds will be allocated. Are we
10 applying for \$5,000 dollar grants? If so, what does that
11 look like? \$25,000 dollar grants? If so, what is that
12 look like? \$100,000 dollar grant? What does that look
13 like? That is a statutory requirement, I don't see that in
14 the rurals, I might be missing it. That's a big piece, for
15 our districts as they want to come forward. If they want
16 to come forward and apply for these grants.

17 CHAIRMAN DURHAM: Thank you. Sorry. So Ms.
18 Colzman, you want to start the presentation on the rules?

19 MS. COLSMAN: Absolutely. Mr. Chair,
20 Members of the Board --

21 CHAIRMAN DURHAM: Turn the mic on.

22 MS. COLSMAN: I'll speak up and speak
23 closer. How about that? Good morning. We have a very
24 brief presentation which just consists of providing a
25 little bit of background, orienting you to materials, and



1 reminding you that we're here to support you with the
2 rulemaking process by answering questions, recording
3 feedback, and responding appropriately.

4 Just as a reintroduction, Dr. Scott Ross is
5 our Director of Office of learning, supports this bullying
6 prevention program will exist within his office. The
7 action today is to approve the rules and should the Board
8 vote to approve the rules today unanimously, then they
9 would be adopted today. Otherwise, we'd come back in May,
10 with any other additional changes that the Board like to
11 have and vote at that point. We've been before the Board
12 in January to provide some information about this program.
13 The notes of real making happened in February. In terms of
14 this initiative as we've indicated, the legislation passed
15 in 2011. Rulemaking was not required until it was funded.
16 It was funded as of January 1st. So we have 90 days from
17 January 1st to promulgate rules.

18 However, we understand that as we are in the
19 process right now, that we should be within an acceptable
20 time limit. In your materials for today, you have a copy
21 of the proposed rules, you have a crosswalk of the rules to
22 statute, you have copies of the written feedback that we
23 have received. And as Ms Murphy indicated the CASB case
24 and the Rural Alliance submitted a letter. She referenced
25 that today. What we've done is responded to some of the



1 particular points that were brought up. We also would like
2 to point out and you'll see it on Board docs. There have
3 been 145 emails received encouraging the Board to adopt the
4 rules.

5 UNIDENTIFIED VOICE: (Inaudible) can you
6 speak even louder?

7 MS. COLSMAN: Even louder, absolutely. And
8 exactly at the time when I'm concluding my comments. So
9 that at this point we're here to support you in this
10 process to answer questions that you may have and support
11 to whatever edits that you would like to make to the rules.

12 CHAIRMAN DURHAM: Members of the Board.
13 Comments, questions, commentary. It's my understanding
14 that we hope to actually to reduced funding this for next
15 year by 50 percent to \$1 million. Further headed in the
16 right direction.

17 MS. FLORES: Come on. Good grief.

18 CHAIRMAN DURHAM: Yes. Dr. Schroeder.

19 DR. SCHROEDER: I have to admit that I
20 rather struggled with the legalese in the letter regarding
21 the definition. Can you tell me what's wrong with the
22 definition as we've changed it? Where could legal counsel
23 help us understand. What is the concern that's being --
24 whether you share the concern that's being presented by



1 CASB that we're messing up the definition to a point where
2 it becomes an issue of litigation.

3 MR. DILL: Well, I -- I don't -- I don't
4 think I state in the letter that the draft rule language
5 contradicts the definition I sent for in statute. I think
6 that it would be a better term to say that it explicates
7 it.

8 MS. SCHROEDER: What does that mean?
9 Explains?

10 MR. DILL: Yes.

11 MS. SCHROEDER: Okay.

12 MR. DILL: I think the -- the problem that
13 was identified by the state Board in the January meeting
14 was whether or not somebody could read this definition and
15 decide that it's utterly subjective. And in fact, subject
16 students to penalties for bullying. When in fact, no
17 bullying was intended even though that may have been the
18 subjected view of one student. And so, in order -- in
19 order -- the problem for that of course, is that public
20 schools are government actors.

21 Due process does apply to actions in public
22 schools. Again, the concern is that a public school could
23 find itself in the position that we see some institutions
24 of higher education. Where they've taken actions against
25 students in ways that were found by federal courts and now



1 be Constitution. So in order to avoid that result, I think
2 that the language was intended to clarify that, you know,
3 this definition applies to actions that a reasonable person
4 would believe was intended to coerce, intimidate or cause
5 physical, mental or emotional harm to a student.

6 MS. SCHROEDER: And you're fine with that?

7 MR. DILL: I -- I -- Yes, I'm fine with
8 that. I -- I -- I think that would be readily defensible.
9 If somebody legislate legal services, I thought that was a
10 concern. I'd also point out that the, you know, the grant
11 of authority in the bullying prevention program to the
12 State Board, actually does allow the State Board to go
13 beyond just statutory language in some instances. It says
14 that rules must include, but are not limited to. You know,
15 it gives the leading. And then in terms of criteria it
16 talks about, you know, your rules must add a minimum. You
17 know, do this, and it doesn't necessarily State Board could
18 not indicate discretion in implementing this program go
19 beyond.

20 MS. SCHROEDER: Beyond. I appreciate that.
21 Thank you.

22 CHAIRMAN DURHAM: Yes, Dr. Scheffel.

23 MS. SCHEFFEL: So Mr. Dill, could you
24 clarify a little further this definition issue. What
25 you're saying is, it references, this definition in the



1 rules strikes me as more detailed than the one on which
2 it's based. Is that right? And it seems very inclusive.
3 You're saying that it reduces subjectivity. I think that
4 in trying to reduce subjectivity, almost creates such a
5 pervasive statement that anyone can be accused of it at any
6 time, and can be held accountable. I mean, am I wrong?
7 Tell me.

8 MR. DILL: Well, I -- I think that was the
9 concern expressed in terms of the definition that's --
10 that's included in the statute.

11 MS. SCHEFFEL: We don't have to have this
12 definition. I mean, this is more than what's in the
13 statute.

14 MR. DILL: I -- I don't actually believe it
15 is more than what's in the statute. What I think it -- it
16 does is -- is clarify how -- how the statute is meant to be
17 a -- a -- applied in real life.

18 MS. SCHEFFEL: So what I didn't see in
19 statute was these kinds of very exclusive terms like any
20 written or verbal, or pattern that or not and to coerce, or
21 cause any physical, mental, or emotional harm to any
22 student, prohibited against any student for any reason
23 including any behavior. I mean, it's so inclusive.

24 MR. DILL: Oh, I see.



1 MS. SCHEFFEL: I can't imagine anything that
2 wouldn't fall under this (inaudible). That's why I think
3 it's -- it goes -- it's more than what the statute
4 suggests.

5 MR. DILL: The statute does use the term
6 any, in terms of this -- in terms it says any written, or
7 verbal expression.

8 MS. SCHEFFEL: Maybe I need to look at that
9 link side by side to this language --

10 MR. DILL: Yeah.

11 MS. SCHEFFEL: -- because this is a much
12 longer definition. It's extremely inclusive.

13 MR. DILL: They get cut off in there on
14 separate pages. But in terms of the response for written
15 comments you have of the statutory language on one page,
16 and then the -- the language of the proposed rules on the
17 next page that the changes highlight, there's two. The
18 first one is adding the language a reasonable person would
19 believe is intended to course (inaudible).

20 MS. SCHEFFEL: So when it says bullying, it
21 has same meaning as set forth in Section 22-32-109.1? Is
22 that on this piece of paper? Where is it?

23 MR. DILL: Yes, that is. And that's in the
24 definition in the Anti-bullying Prevention Program Two,



1 that says bullying has same meaning as this particular
2 section.

3 MS. SCHEFFEL: Where is that section?

4 MR. DILL: 22-9-101.

5 MS. SCHEFFEL: And I'm looking at the first
6 of all, where is Section 22?

7 MS. MAZANEC: I don't think they showed them
8 with section. They just say that this is the definition
9 program statute.

10 MS. SCHROEDER: And this is 1.01. I mean,
11 this is our rules which is very expensive.

12 MS. FLORES: He is looking at the documents.

13 MS. SCHROEDER: What is this? Turn the
14 page. I'm trying to see if we have a crosswalk between the
15 language in the statute that defines bullying and the
16 language in the rules. I don't see it on you, they're
17 missing.

18 MS. FLORES: He is looking at the response
19 of written comments.

20 UNIDENTIFIED VOICE: We got that yesterday,
21 and we sort of added it to our study guide.

22 MS. SCHROEDER: Okay, thank you. I'm sorry.

23 MS. MAZANEC: Could I ask a question?

24 UNIDENTIFIED VOICE: Yes, Ms. Mazanec.



1 MS. MAZANEC: Just try to explain this. I'm
2 not sure why did the -- why did the reasonable person would
3 believe?

4 MR. DILL: That was meant to address concern
5 that as written somehow as well just it likes to attempt to
6 apply was in what I would term subjective. And -- and in
7 other words, that to a situation where no actual bullying
8 behavior occurs but perhaps there was an intention. And --
9 and it was -- it was meant to allow school districts to --
10 to use their reasonable judgment in -- in -- in terms of
11 identifying what type of behavior actually meets the intent
12 of the statute.

13 UNIDENTIFIED VOICE: Mr. Chair just as a
14 reminder, we did change that definition at the request of -
15 - of the last meeting with you. So we were trying to
16 adjust the definition based on your feedback from the last
17 meeting.

18 MS. MAZANEC: So what was adjusted?

19 UNIDENTIFIED VOICE: I believe that phrase
20 that somehow the reasonable person.

21 MS. MAZANEC: That phrase?

22 MR. DILL: Yeah. There -- there were two
23 changes. If you look at page two of the responses to
24 written comments, first paragraph on the right hand side,
25 it has highlighted two separate changes that we did.



1 MS. MAZANEC: So just that phrase, I think.
2 No, further questions. I understand.

3 CHAIRMAN DURHAM: Any other questions?
4 Anything else that you wanna proceed Dr. Schroeder?

5 MS. SCHROEDER: Chair, I just feel like the
6 rules have too much in them. I -- I feel like we don't
7 have to have these rules the way they are. And I think
8 when we really look at the statute which I read a number of
9 times, it seems that the goal is to provide data that looks
10 at frequency of bullying. And so if we just stick to the
11 statute, schools are asked to adopt a policy for bullying,
12 adopt a discipline policy, put in place a policy that will
13 reduce frequency, have a voluntary biannual survey that
14 asks about frequency, and have a plan to distribute the
15 data, put an advisory committee in place.

16 I mean, there's a lot more in these rules
17 than those six or seven things. I guess I haven't had a
18 chance to meet with CDE, and go through this line by line,
19 but there's a lot of language that can be omitted, and so
20 that we stick strictly to the statute. And the reason for
21 that is because the language around bullying is so
22 expansive that there's no reason for us to create this
23 burden for districts. They need to be addressing the issue
24 of bullying, but for us to create this level of specificity
25 for districts, I think, is misguided because they know



1 their students best, and they know the context of
2 infractions of their discipline -- policy best. So I don't
3 wanna see us use this grant as a -- again, way to diminish
4 local control over disciplinary issues including bullying.

5 MS. FLORES: But --

6 CHAIRMAN DURHAM: Dr. Flores?

7 MS. FLORES: But don't we have? I mean, I -
8 - I -- I wanna ask Dr. Ross these rules were with your
9 guidance, were written with your guidance, and I know that
10 I was impressed with your experience, and with your
11 education. Would you say that this is what is normally in
12 other bullying acts across the country?

13 MS. COLSMAN: So Mr. Chair, as far as if I
14 may just address frame, and then hand off to Dr. Ross. So
15 to Dr. Scheffel's comments --

16 MS. SCHROEDER: I'm sorry.

17 MS. COLSMAN: -- we'd absolutely be willing
18 to look at anything in here that we've expanded beyond what
19 -- what is -- is in statute is never intent to go beyond
20 what's in statute. There are a few instances where Dr.
21 Ross had some recommendations in terms of evidence based
22 best practices as part of the recommendations. And you can
23 see those in terms of the -- the crosswalk document. You
24 can see where some of those are non staff recommendations.



1 So I just wanted to kind of bridge that comment, and hand
2 off to Dr. Ross to respond.

3 UNIDENTIFIED VOICE: Sure.

4 CHAIRMAN DURHAM: Dr. Ross.

5 MR. ROSS: Good morning, Board and Mr.
6 Chairman, Commissioner. I appreciate you having me here.
7 With regards to the additions to statute, there are
8 actually very, very few. I think it may be best to go at
9 some point, as you mentioned line by line. However, these
10 few things that we did suggest were fundamental to
11 implementation of the -- the program. As an example, one
12 thing we did add was with regards to Evidence Based
13 Practice, the definition of evidence based practice
14 includes the implementation of evidence based practice.

15 It's very easy to buy a program off a shelf
16 that is called an evidence based program. However, if
17 nobody actually implements it, you can hardly say it's
18 evidence based practice. So one of the addition, one of
19 the additions we made was to request that applicants say
20 how they are going to ensure that they actually implement
21 the said program. There are a few other small
22 modifications, but for the most part we tried to stick
23 exactly to statute and not require any more than what --
24 what we interpreted statute to require.

25 CHAIRMAN DURHAM: Ms. Mazanec?



1 MS. MAZANEC: So you're saying that you
2 asked them to tell you how they are -- tell us how they're
3 actually going to implement it?

4 MR. ROSS: Correct.

5 MS. MAZANEC: But don't they also have to
6 report the results?

7 MR. ROSS: They have to report --

8 MS. MAZANEC: -- and the implementations?

9 MR. ROSS: Yes. They are required by
10 statute to report the frequency, or the progress they've
11 made in changing bullying. And if we don't ask them to
12 show that they're going to actually do the program, we have
13 no idea whether any changes that occurred are due to them
14 doing the bullying program, or their efforts or anything
15 else.

16 MS. MAZANEC: And what does that look like
17 when they tell you how they're going to implement?

18 MR. ROSS: Sure. So one -- one example is
19 they would have a schedule for doing training with teachers
20 who are going to then teach the students how to be a better
21 friend, or how to respond when somebody is being
22 disrespectful towards them or somebody else. So one
23 example is to have an actual calendar that says this is
24 what we followed up and did, this is when we're going to do



1 the training, this is how it's gonna look. As opposed to
2 we're gonna buy this program and that's it.

3 CHAIRMAN DURHAM: Yes, Dr. Schroeder.

4 MS. SCHROEDER: I think we talked about this
5 last time, but the Journal of Criminology, published an
6 article, I think they reported 95 different schools
7 nationally, 7000 students. It's correlational data, so
8 there are weaknesses in the data. But it certainly
9 suggests that there's a dearth of evidence based practices
10 around this issue. Sorry. A dearth of evidence based
11 practices in the area for bullying. And I think the
12 comments of Ms. Murphy suggest that really the terminology
13 has changed. It's not so much on the negative anti-
14 bullying as it is in the positive. How can we create civil
15 environments for students during your educational
16 experience? Can you comment on that research?

17 MR. ROSS: Absolutely. So you're correct
18 that many of the interventions strategies, and programs are
19 not labeled bullying prevention necessarily. However, many
20 programs, and practices have demonstrated specific
21 reductions. Take for example Positive Behavior Support.
22 Colorado is actually one of the gold standard states, as
23 far as this goes, with over 500 schools implementing that
24 program. That is not a bullying prevention program. It is
25 however, a program for setting high expectations



1 behaviorally, and recognizing positive behavior in the
2 school.

3 And that has in fact demonstrated
4 significant reductions in bullying through a randomized
5 controlled trial study done in Maryland. So when it comes
6 to the programs that schools want to implement, there is no
7 need to call them 'Bullying Prevention Programs'. However,
8 we -- we have asked for the -- the rules, asked schools and
9 applicants to indicate what strategies they wanna
10 incorporate to reduce bullying. Those can be called a
11 Evidence Based Bullying Prevention Program, or an Evidence
12 Based School Climate Intervention. We simply ask, or the
13 rules requests that -- that applicants indicate how they
14 will measure both the outcomes of that intervention as well
15 as the implementation of that intervention.

16 MS. MAZANEC: The only thing they are
17 required to measure is frequency? All right.

18 UNIDENTIFIED VOICE: I think there might be
19 one other word 'perception.' There's really like two
20 questions.

21 MR. ROSS: Absolutely.

22 MS. MAZANEC: You say that the surveys look
23 like they'll be very expensive?

24 MR. ROSS: Good question. Let me see if I
25 can break them into the two parts. First, the certain



1 questions that are required in statute are certain
2 questions that each survey shall ask of each student
3 concerning how frequently the student witnesses bullying in
4 his or her school, and how frequently the student perceives
5 himself or herself to be a victim of bullying?

6 MS. SCHROEDER: That's two questions. My
7 concern is when this gets implemented because really
8 Colorado was the recipient of a nationwide movement for
9 these bullying laws. A number of states adopted them
10 pretty much around the same time within one year. So it's
11 not like this was a grassroots effort in Colorado to
12 address bullying. And so the language in the statute, and
13 the language that's been taken from other examples of rules
14 that we're looking at now. I think doesn't do us a service
15 in terms of sticking strictly to the statute. How will we
16 ensure that we're not gathering data on kids that's beyond
17 the scope of a law which asks two questions?

18 MR. ROSS: The first response is that the
19 surveys that are requested are very similar in rule, as
20 they are in statute. So in rule we are not asking schools
21 to do any more than what statute requires.

22 CHAIRMAN DURHAM: Tell us what's in the --
23 the survey.

24 MS. SCHROEDER: Same here.

25 MR. ROSS: Survey --



1 MS. SCHROEDER: And it matters because of
2 privacy, right? And these services are supposed to be
3 voluntary, so you know --

4 MR. ROSS: Yes.

5 MS. SCHROEDER: -- it assures us that the
6 surveys are two questions, and it is very clear that
7 they're voluntary. Because also in here it's saying how
8 will you aggregate, analyze, standardize, disseminate the
9 data? It doesn't sound like you can do that with two
10 questions. So I think there's a tension right there. I
11 wanna ensure that in these grants schools are not asked to
12 do more than that.

13 CHAIRMAN DURHAM: So if there are two
14 questions being answered perhaps we ought to write a survey
15 and that survey that will be given and the only survey it
16 will be given. We could actually put that in rules
17 couldn't we?

18 MS. COLSMAN: So the Board does have the
19 authority to define what the survey is, that the districts
20 would use. Make it clear that within this grant program,
21 the department would not be collecting any of personally
22 identifiable information. We do not collect any of the
23 survey results themselves. What we are asking is that
24 districts would report on the progress for reducing
25 incidents of bullying behavior. So all of that information



1 is kept at the school level. It's not part of any of the
2 information that we have at the department.

3 CHAIRMAN DURHAM: I think what's -- what's
4 causing the problem is that, you know, and I think what
5 we've seen is wrongfully accused people get stigmatized.
6 So it does make a difference where the record is so long as
7 it happens to be a record that follows the child. So I
8 think the location of the record is not termed irrelevant
9 in this discussion because what we're -- at least, I won't
10 speak for Dr. Scheffel, but what I'm concerned about is the
11 stigma to -- using this to stigmatize people who may have
12 ordinary views or do what kids normally do and finding some
13 overly aggressive enforcer.

14 MS. COLSMAN: So Mr. Durham absolutely
15 that's something that we would wanna prevent against. If
16 you look at the Section 2.01 to 2.2.2 of the rules, what
17 we're suggesting is that through the website that Ms.
18 Murphy noted that we would provide the guidance on the
19 survey questions.

20 CHAIRMAN DURHAM: Why don't we just write
21 the survey questions?

22 MS. COLSMAN: We can absolutely do that.
23 Keep in mind that what the --

24 CHAIRMAN DURHAM: And just put it in the
25 rules.



1 MS. COLSMAN: Absolutely. And what this is
2 suggesting is not to identify who is been -- who is the
3 bully but to instead we're asking students their own
4 experiences on the frequency of the bullying that they have
5 experienced. It's not asking students to identify any of
6 their perpetrators.

7 CHAIRMAN DURHAM: There are actually people
8 out there who think you get an honest answer, an honest
9 result in this stuff. Dr. Scheffel.

10 MS. SCHEFFEL: Well, and if you've looked at
11 any of the sample surveys from other states who have
12 adopted bullying laws at the same time Colorado did, the
13 surveys are very extensive and there are vendors
14 aggregating those survey data -- data points. And so it's
15 not -- it's not as though this is just a casual couple of
16 questions. All we're doing is trying to figure out
17 frequency and hope it diminishes. This is a huge national
18 movement, and the data on this, the privacy issues are
19 substantial.

20 So I guess I'm not prepared to vote on the
21 rules today or accept them. I'd like to go line by line
22 (inaudible) and talk to others that have concerns and
23 ensure that there's actually guidance in the rules to
24 ensure that this -- that this law and the rules that go
25 with the law actually give schools guidance on creating a



1 very local control approach to this issue and not
2 centralizing data in any way and take a unique look for
3 Colorado.

4 CHAIRMAN DURHAM: Dr. Schroeder.

5 MS. SCHROEDER: Do you think that if we
6 include a survey that provides the kind of, I wanna say
7 constraints, that you want to ensure --

8 MS. SCHEFFEL: I don't know. We'd have to
9 think about it. I guess I'd like to direct the districts
10 to be very limited in the data.

11 MS. SCHROEDER: If you want to give
12 districts the opportunity to do what they want to do, then
13 there's a little tension here between telling them what
14 they can't do and what they shouldn't be doing and saying,
15 "You've got local control and you can handle this in the
16 way (inaudible)."

17 MS. SCHEFFEL: This is just related to this
18 grant though. Schools are doing what they're doing based
19 on their local Boards and parental input and so forth.

20 MS. SCHROEDER: Right, but as part of this
21 grant.

22 MS. SCHEFFEL: As part of this grant. It's
23 need to be as -- it needs to be close to the statute and
24 not going beyond it.



1 CHAIRMAN DURHAM: I'd like to respond to
2 that to some extent. When we're talking about grants, I
3 don't see a particularly local control element in it. It's
4 competitive. It's not local control. It's not something
5 they're are entitled to. We can be as prescriptive as we
6 wish to be when it comes to grants and if they want the
7 money, they will -- they will apply and meet the terms. So
8 I think we have to do it to separate this from local
9 control and in part for two reasons. One, can we establish
10 a better model that we would hope would be adopted
11 voluntarily by those who don't receive grants. And two,
12 can we prohibit at least on the part of the expenditure of
13 these funds behavior that majority of the -- Board might
14 deem inappropriate. And I don't think either of those
15 things, we're talking about grants, is out of line.

16 MS. SCHROEDER: And I would agree, the only
17 thing is, with this grant is asking a school to put in
18 place a discipline policy and a dress code and all these
19 things that I read in the law and I'm -- so I'm saying that
20 it's possible that this grant can prompt a much broader
21 implementation than just frequency bullying. So that's why
22 I think it's good that we provide guidance on not going
23 beyond the statute and schools locally will put in place,
24 if they want to pursue bullying outside of this grant,
25 that's their choice. But as far as, you know, driving this



1 centrally from CDE through a competitive grant process I
2 think we want to be very careful about going beyond what's
3 necessary in the law. I don't think he's representing
4 that.

5 UNIDENTIFIED VOICE: Thank you so much. I
6 appreciate the conversation. And I don't have a problem
7 with the conversation but I needed to make sure everyone's
8 aware that a very, very large number of districts and
9 schools do culture and climate surveys already. I think
10 with this, the majority will say, "Hey, we'd love to add
11 these two very simple questions to the culture and climate
12 survey we're already doing. " Or they may even say, "We
13 already ask these two questions as part of our culture and
14 climate survey." The unintended consequence of saying you
15 must use ours is that we didn't force them to do two
16 surveys to the exact same population when they're already
17 doing it and they even already have the data. My
18 (inaudible) of requiring that -- that they must use our
19 survey and our questions so that we limit the scope.

20 MS. MAZANEC: Why would they needed to do
21 with this grant program if they wanted to add those
22 questions to their (inaudible)?

23 UNIDENTIFIED VOICE: Well, I have agreed
24 with you. We've been having a conversation that we will
25 write the survey that you must use to be part of this grant



1 and I'd say there's a lot of surveys that already include
2 these two questions.

3 CHAIRMAN DURHAM: Do parents have the right
4 to opt out of climates wherever there are surveys?

5 UNIDENTIFIED VOICE: (Inaudible).

6 CHAIRMAN DURHAM: Thought maybe we ought to
7 prescribe an opt in for the survey.

8 MS. SCHEFFEL: Yeah, because the survey's
9 supposed to be voluntary and I think it should be opt in.

10 CHAIRMAN DURHAM: I keep waiting to see a
11 really voluntary survey. I'm sure I'm gonna live that
12 long.

13 MS. SCHEFFEL: That's the thing. So parents
14 need to be really apprised of the questions and student and
15 they need to be opt in.

16 UNIDENTIFIED VOICE: I agree. But in my
17 experience these are extremely public surveys. They're on
18 the school's website. It's something they've been doing
19 for 15 years. They're charting these. I understand the
20 concern. If this would stand alone completely by itself it
21 would be so easy for districts to say, "Well, it's not that
22 we have to ask two questions, let's throw 15 more on that
23 around all kinds of things." And I would agree that that's
24 not what we want at all.



1 MS. SCHEFFEL: When I was responding to, I
2 can't remember what the language is but that CDE would
3 offer guidance on the content of the survey. That's what
4 I'm trying to get away from. Because then we end up
5 looking what other states are doing. They've got a 30
6 question survey and CDE's giving guidance on it. We don't
7 want that. We want a minimalist survey only that which is
8 required by law.

9 UNIDENTIFIED VOICE: (Inaudible).

10 CHAIRMAN DURHAM: I think, Dr. Scheffel and
11 I might disagree. I'd like to prescribe all they can do.

12 MS. SCHEFFEL: Not yet.

13 CHAIRMAN DURHAM: If it's -- and prescribe
14 the two questions that keeps them an overly enthusiastic
15 individual from making it a 50 question survey.

16 MS. FLORES: But what if they're (inaudible)
17 doing a survey?

18 CHAIRMAN DURHAM: We're gonna adjourn 11:15
19 a.m. because of an engagement the Board has. We will take
20 a vote on this. I will be a no vote so it will not -- you
21 will lay over, what, one Board meeting?

22 MS. CORDIAL: Mr. Chair?

23 CHAIRMAN DURHAM: Yes.

24 MS. CORDIAL: If it's not unanimous then the
25 Board doesn't have to vote at all.



1 CHAIRMAN DURHAM: Okay. So it's not going
2 to be unanimous. I won't be a no vote. And let me say
3 what I think is clearly missing. And when you come back
4 needs to be added in a very meaningful way. And that is
5 that anybody who gets this grant implements a vigorous and
6 well prescribed in the rules due process program. That any
7 individual who is accused of the violation of any of these
8 is entitled to a due process that we prescribe and it's
9 gotta to be a meaningful due process up to and including
10 the provision of counsel to anyone that's accused and
11 that's before any disciplinary action is taken or anything
12 entered on the permanent record. So it's gonna need to
13 need to come back with that provision or I will continue
14 being no vote it might be in the minority. But I think if
15 we've learned one thing, false accusation, we've seen a lot
16 of evidence of it is you know, parents don't have the
17 resources to fight it. Kid gets labeled and away you go.

18 MS. SCHEFFEL: Right.

19 CHAIRMAN DURHAM: And so at least so long as
20 we're spending discretionary money one things the district
21 is gonna have to opt into, as far as I'm concerned I'll be
22 a no vote. I might be the only no vote.

23 MS. SCHEFFEL: I doubt it.

24 MS. RANKIN: Are we done discussing?

25 CHAIRMAN DURHAM: Yes. Ms. Rankin.



1 MS. RANKIN: Are we done discussing?

2 CHAIRMAN DURHAM: Yes.

3 MS. RANKIN: She wants to say something.

4 CHAIRMAN DURHAM: No, no we're not. I
5 thought you all wanted to leave.

6 MS. RANKIN: So when I look at these
7 responses to written comments. In my right has -- has this
8 draft been posted?

9 MS. COLSMAN: Yes it has. It's been posted
10 publicly since January. And it was posted again in
11 February with all of the changes as part of the rulemaking
12 process.

13 MS. RANKIN: Okay. So am I right to assume
14 that these comments that were we have submitted by the
15 three organizations that Michelle Murphy spoke to, those
16 are the ones that the letters were associated with and
17 these responses are to those specific letters. The other
18 e-mails were we have 8,363 I think at this point, that say
19 the same thing. Those were e-mails but no one from that
20 organization has or whoever those -- that larger and it's
21 not 8,000. It was what? One hundred and forty-five. No
22 one has come forth with that, but those were all the same.
23 Is that correct? Okay. I was just trying to get that Wall
24 Street but that -- anyone that wanted to comment for a --
25 has the opportunity.



1 MS. COLSMAN: It's open for two months of
2 that -- that process, and we typically don't provide
3 responses to -- to feedback that doesn't have to comments
4 like those 145 e-mails. I don't suggest changes. Right.
5 And so what you see here are the specific changes or
6 specific issues that (inaudible) and the realm of alliance
7 indicated and we provided responses for those.

8 MS. RANKIN: And then since the legislature,
9 they have, I believe it was two million to start. And they
10 cut it in half. So it's one million. Does that go just
11 for this year? How far does that go into just have to be
12 revisited as in BB again if there's any money left over
13 from here.

14 MS. COLSMAN: So the way that we understand
15 that that's an ongoing appropriations of let's say a two
16 million dollar a year appropriation for this particular
17 grant program. The way that we've understood the
18 discussion and why we see some reduction for next year
19 could be because since we receive the two million in
20 January and we really won't be able to expand that
21 necessarily during this fiscal year. I'm imagining that
22 they looked at next year's appropriation and determine that
23 there was sufficient money in the program that they could
24 look at next year's appropriation. For next year, the
25 appropriate -- the grant money is available would be



1 approximately three million. So after that will be two
2 million. That's our understanding correct.

3 MS. RANKIN: And can we change -- can we
4 revisit whatever rules we come up with? Can we revisit? I
5 mean this is a new program. Do we have flexibility to
6 start out with something and then when we see that maybe it
7 needs to go a different way. Is that possible?

8 MS. COLSMAN: Yes. The Board has the
9 discretion to revisit its own rules. But there doesn't
10 need to be a formal process like we have right here for
11 that to occur.

12 MS. RANKIN: And then my last question was
13 that there's many assessments along the way but is there a
14 final report that we would get at the end of our first year
15 of this summarizes the success, failure, indifference of.

16 MS. COLSMAN: Yes, it is.

17 MS. RANKIN: Just to equate this
18 supplemental plan limitation. So like I mean you've said
19 there are already all sorts of districts or 500 schools
20 engaged in a particular program. This can't be used. This
21 money can't be used to pay for that.

22 CHAIRMAN DURHAM: Five hundred schools would
23 not be eligible because they have a program.

24 MS. COLSMAN: We will look into -- to that
25 particular question and have that question answered for



1 next time. We want to make sure that we answer that
2 accurately.

3 CHAIRMAN DURHAM: I think we need so those
4 of you that are going to the lunch, I apologize but I can't
5 we're going to take a -- we're going to adjourn until 9:00
6 a.m. Wednesday May 11th, 2016 looking forward seeing you
7 all in. Thank you.

8 (Meeting adjourned)



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C E R T I F I C A T E

I, Kimberly C. McCright, Certified Vendor and Notary, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of October, 2018.

/s/ Kimberly C. McCright
Kimberly C. McCright
Certified Vendor and Notary Public

Verbatim Reporting & Transcription, LLC
1322 Space Park Drive, Suite C165
Houston, Texas 77058
281.724.8600