



COLORADO
Department of Education

Colorado State Board of Education

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COLORADO DEPARTMENT OF EDUCATION COMMISSION
DENVER, COLORADO
June 11, 2014, Part 4

BE IT REMEMBERED THAT on June 11, 2014, the
above-entitled meeting was conducted at the Colorado
Department of Education, before the following Board
Members:

Paul Lundeen (R), Chairman
Marcia Neal (R), Vice Chairman
Elaine Gantz Berman (D)
Jane Goff (D)
Pam Mazanec (R)
Debora Scheffel (R)
Angelika Schroeder (D)



1 MS. NEAL: She's gone again.

2 CHAIRMAN LUNDEEN: Next item on the agenda
3 is consideration of the approval of the application for
4 certification and amendment of existing certification of
5 multi-district online school submitted by Byers School
6 District on behalf of Cova Inc, New Elementary School
7 Inc., New Middle School Inc., and Elevate Academy. This
8 is the item, incidentally, that I pulled from the consent
9 calendar earlier in the day.

10 I understand that Superintendent Tom
11 Turrell, I'm going to pronounce that properly, from Byers
12 is here, as well as CDE staff. Mr. Commissioner.

13 COMM. HAMMOND: Thank you very much. I
14 think you want an explanation if I -- don't want to
15 mischaracterize you.

16 CHAIRMAN LUNDEEN: I'll frame it. I'll
17 frame it. You want me to frame it?

18 COMM. HAMMOND: Yeah. There were two
19 exceptions noted. Concerns -- not concerns, but two
20 exceptions, is what I call them, as part of the request.
21 And we concurred with them proceeding ahead with our
22 proposal and that's why we wanted it on the agenda for
23 approval. And I think you had one questions about what
24 those two statements were.

25 CHAIRMAN LUNDEEN: Yeah. And just for my



1 colleagues, what caught this -- caught my eye on this,
2 was it has a "V", for vote, and then a "c", for consent,
3 over it. And I was curious what that looked like in a
4 preliminary agenda item. And so I -- when I looked a
5 little deeper and came across the letter of authorization
6 that said: However, in the second paragraph, there is
7 some -- there are some significant concerns the CDE staff
8 would like to note for the State Board of Education and
9 encourage the team from Byers to address before opening
10 these schools. And then I've gone in a little bit
11 deeper. But that's what -- I just was -- we got a
12 comment about a signpost, being sign-posted on for this
13 board, I'd like to elucidate that signpost, please.

14 UNKNOWN SPEAKER: Sure. So, Mr. Chair, I'll
15 have Gretchen Morgan, who oversees many offices,
16 including the online office, share with you. This is a
17 recommendation from staff for an approval of a multi-
18 district online school, which is traditionally on the
19 consent agenda. Very similar to an approval that
20 happened last year where one school is converting to a
21 new set of schools in multi-district online. That's what
22 has triggered this particular staff caution to go along
23 with the recommendation. So there's a bit of a precedent
24 for this, and she can share with you the detail of that
25 recommendation.



1 CHAIRMAN LUNDEEN: Please.

2 MS. MORGAN: Thank you. So the two concerns
3 listed in the letter were -- and I'll just read from the
4 letter. The schools are identified as charter schools,
5 but there's little detail provided about the chartering
6 process that took place. As the authorizer, the district
7 needs to ensure that a governing board, or governing
8 boards, are in place, that charter school contracts with
9 clear performance measures are in place, and that each
10 school has a distinct staff in school leadership to align
11 with state and federal definitions of charter schools.

12 Second comment was, the curriculum which was
13 identified in the application do not consistently align
14 to state standards. One reviewer asked whether the
15 school teams had considered whether Cova's (ph) current
16 level of performance on the state -- on the state
17 performance framework may relate to this lack of
18 alignment. This is an important question. One that CDE
19 staff recommends the school industry leaders examined
20 deeply and quickly to ensure that all students across the
21 schools are engaged in rigorous standards aligning
22 curriculum this fall.

23 CHAIRMAN LUNDEEN: And the answer is the
24 exception, the reason for the exception. And as I kind
25 of just continue with my personal story on this, as I



1 looked into it further, this is a significant -- this is
2 a trebling in size of a district's responsibility for
3 management in terms of number of students.

4 COMM. HAMMOND: Right.

5 CHAIRMAN LUNDEEN: It goes from about 1000
6 students to more than 300 students, and so that's an
7 enormous increase to my mind. And although I --
8 everybody in the room that knows me knows that the
9 innovation, advocacy, Lundeen's even a bit of a cowboy,
10 is kind of the way I approach this. That seemed to me to
11 be remarkable in nature. And to do -- and to release
12 with some -- these such -- what I would describe as
13 substantial and broad concerns, is worth explaining
14 exactly why that makes sense.

15 MS. MORGAN: Mr. Chair.

16 CHAIRMAN LUNDEEN: Please.

17 MS MORGAN: So, in the criteria that are
18 used to evaluate multi-district online applications,
19 there's significant criteria about governance capacity,
20 actually, and their applications did meet those criteria,
21 and the details of that are available in your -- in your
22 board documents that you can look at. But those
23 questions were asked of the reviewers during the review
24 process about what is the districts readiness for
25 authorizing this many new schools at once, was certainly



1 considered by the reviewers, and in the end they felt
2 like the responses from the district in their
3 applications was sufficient to meet criteria.

4 These other questions, to some extent, go
5 beyond criteria. Right. The chartering process, for
6 example, is not called out in the criteria for multi-
7 district online schools, because, of course, you can have
8 one of those that is not a charter. But our office felt
9 like it was important to point out that that hadn't been
10 sufficiently described. Because it is a big deal, it's
11 new work, it's important work, and our office has an
12 obligation to try and help authorizers do a good job at
13 that function.

14 The district responded with some
15 communication, which I think you've received as well in
16 the board documents.

17 CHAIRMAN LUNDEEN: Yeah.

18 MS. MORGAN: Essentially identifying that
19 they agree, this is a big deal, and they're paying
20 attention to these two things. So that's there for your
21 consideration as well.

22 CHAIRMAN LUNDEEN: Yeah, okay. So -- Pam,
23 go ahead.

24 MS. MAZANEC: So, what process did happen
25 for this? Was there a process at all? I mean was --



1 MS. MORGAN: Mm-hmm. Yeah do you want to
2 understand the review process?

3 MS. MAZANEC: I'd like -- yeah, I'd like --
4 yeah. I liked -- No. I mean the process of Byers School
5 District putting this proposal together. Were there
6 public meetings, was there DAC involved?

7 UNKNOWN SPEAKER: Mr. Chair, are you
8 comfortable if we ask the Byers' team to come to the
9 table?

10 CHAIRMAN LUNDEEN: Sure, please. I mean, if
11 they're in the room let's --

12 MS. MORGAN: Terrific.

13 CHAIRMAN LUNDEEN: We'll even let you sit
14 down. How's that?

15 UNKNOWN SPEAKER: Yeah, great.

16 MS. EDGAR: Thank you.

17 CHAIRMAN LUNDEEN: We try to be a courteous
18 host.

19 MS. EDGAR: And I can start, Mr. Chair, if
20 that's okay.

21 CHAIRMAN LUNDEEN: Please. Introduce
22 yourself.

23 MS. EDGAR: Certainly. My name is Kristin
24 Edgar. I'm an attorney with Caplan and Earnest. We're
25 outside counsel to Byers School District. We were



1 involved in advising them as they entered into this
2 partnership with the multi-district online school and
3 charter school.

4 What I can tell you from our perspective,
5 again, without waiving attorney-client privilege; the
6 school district did follow the charter process in their
7 policy and pursuant to the law, and as part of that they
8 had multiple meetings with us, with the charter school,
9 that's also the multi-district online school, about
10 organizing the charter, bringing it into the school
11 district, and ensuring that appropriate guidelines for
12 approving the charter were followed. Toward that end
13 they also negotiated a charter contract with the multi-
14 district online school. It is based on the model
15 contract that's on CDE's site, in many regards.

16 The multi-district online school also has
17 counsel who's here in the audience today, Bill Lethke
18 (ph), who's well versed in charter school issues. And so
19 I worked with him in negotiating that with providing
20 active input to the Board of Education.

21 The Board of Education met multiple times
22 with me to make sure that they completely understood what
23 it meant to have a charter school in addition to a multi-
24 district online school, and to get familiar with those
25 concepts. They have also gone to great lengths to



1 consult with the Board of Cooperative Educational
2 Services that serves this district. That's the EC, East
3 Central BOCES. And so, they got -- they had many
4 meetings with the EC BOCES. There were public meetings
5 about bringing in these schools and the special education
6 eligible students that they'll be served, and there is a
7 document that's been negotiated between the charter
8 school, the district and the BOCES about how they're
9 going to serve those students appropriately, and they do
10 actually have the capacity to do so.

11 So -- and then everything was submitted, I
12 believe eventually, to CDE, the charter contract that
13 both parties approved, again, after a consultation with
14 the counsel. So, the charter process has been followed,
15 but set forth in law and district policy.

16 CHAIRMAN LUNDEEN: And I'll come back to the
17 question Pam had raised, public involvement, DAC
18 involvement, those are good questions that I didn't hear
19 and answer to. Please.

20 UNKNOWN SPEAKER: The process with the
21 district accountability. We meet quarterly and our
22 November meeting we did have that as an agenda item. We
23 currently have a multi-district online school with Great
24 Plains Academy, and so it gave me a good opportunity,
25 because I addressed the online status of that school, but



1 it also gave me the opportunity to share our intentions
2 and our goals in bringing on the additional online
3 schools, as well.

4 And the size of that, to address that, the
5 size is going to be very beneficial for us, because the
6 size factor and the finance act. We learned a hard
7 lesson with Great Plains Academy, that in bringing that
8 on -- bringing that in the PPR for the online students
9 actually brought down my brick and mortar online, so it -
10 - there needed to be an increase of size to be beneficial
11 for the brick and mortar, as well as the charter as a
12 whole.

13 The process with the District Accountability
14 Committee was there as well as we've got a small-town
15 paper that all the minutes of the board meetings were
16 published in there multiple times. Had a few -- feel a
17 few conversations from community, but that's all been
18 made public.

19 CHAIRMAN LUNDEEN: So, there was a public
20 time period, but not necessarily public hearing.

21 UNKNOWN SPEAKER: Not to the state of we're
22 having a hearing on the online school. It was just
23 represented in agendas and so forth.

24 CHAIRMAN LUNDEEN: And curriculum
25 coordination and provision, that was one of the -- I've



1 lost my note here -- but to one of the current concerns
2 raised by staff, what's the anticipated plan for
3 curriculum provision?

4 UNKNOWN SPEAKER: Correct. The part of the
5 intent, again, a lesson learned from the Great Plains
6 Academy, is in having an elementary specific middle
7 school specific, high school specific, when we're
8 creating our UIPs, we found it very difficult in creating
9 a UIP for the K-12 online environment, because we needed
10 to be very specific for those 6th, 7th, and 8th graders,
11 the K-6th graders, or K-5, and the 9-12. And so, we felt
12 it very beneficial to authorize the separate schools,
13 because that gives us the ability to be very specific in
14 the needs of those schools along the lines of curriculum,
15 and the needs of the students at those appropriate age
16 levels. So, we felt like -- I'm not sure if I'm
17 answering that question to your -- to the fullest there,
18 but that really is going to allow us to meet the specific
19 needs and identify the curricular needs at the
20 appropriate grade level.

21 CHAIRMAN LUNDEEN: So, is there a contract
22 curriculum provider? Is that what you're referring to?

23 UNKNOWN SPEAKER: Correct. Correct, yes.

24 CHAIRMAN LUNDEEN: And who is that?

25 UNKNOWN SPEAKER: The -- could I bring up



1 one of the school personnel?

2 CHAIRMAN LUNDEEN: Sure, absolutely.

3 UNKNOWN SPEAKER: Okay.

4 MR. BENSON: Mr. Chairman.

5 CHAIRMAN LUNDEEN: Please.

6 MR. BENSON: My name's Ron Benson, I was
7 hired by Colorado Virtual Academy as the CEO to manage
8 the transitional process from the K-12 managed school to
9 being an independent school. And I've helped assist in
10 this process of bringing these other schools online. One
11 of the things that was very apparent to me as being a 25-
12 plus year educator, myself having been a teacher and
13 administrator, principal, superintendent. And evaluating
14 our curriculum at the Colorado Virtual Academy, it became
15 very apparent to me that there were some gaps in the
16 alignment with Colorado Standards. And so, throughout
17 the year we've been identifying those and working towards
18 addressing those in the future.

19 But then, also, in the application for
20 Elevate Academy, using Florida Virtual Academy, or
21 Florida Virtual School curriculum, they have very
22 carefully evaluated and modeled the common core standards
23 across the country. But they have a company that I can't
24 recall the name of it at the moment, but it aligns the
25 common core standards to each state, and allows and



1 identifies very quickly where there is miss-alignment
2 from the common core standards to which they write, and
3 the state standards. And so we'll be using that tool to
4 be able to align the curriculum to Colorado standards and
5 even now have staff that are residual staff from Colorado
6 Virtual Academy working through very carefully to make
7 sure that we align all the curriculum to Colorado
8 standards so that we can effectively educate our
9 students.

10 CHAIRMAN LUNDEEN: Any other questions?

11 MS. MAZANEC: I'm not sure, did you say, so
12 is this Florida Virtual Curriculum? Ora re you saying
13 that you're going to build your own curriculum that
14 aligns?

15 MR. BENSON: In the Elevate Academy Model
16 that we'll - that we have before you, we'll be using
17 Florida Virtual School Curriculum, but it will be aligned
18 with all of those state standards.

19 CHAIRMAN LUNDEEN: All right, no other
20 questions. Any discussion? I've been satisfied in my
21 question. A motion is appropriate.

22 MS. NEAL: I could -- what's it -- oh, there
23 we go. I move to approve the application for
24 certification and amendment of existing certification of
25 multi-district online schools submitted by Byers School



1 District on behalf of Cova Inc, New Elementary School
2 Inc, New Middle School Inc, and Elevate Academy.

3 CHAIRMAN LUNDEEN: That's a proper motion.
4 Is there a second? Angelika. Is there any objection?
5 Hearing none, motion carries. Thank you very much.

6 MS. NEAL: Thank you.

7 UNKNOWN SPEAKER: Thank you.

8 CHAIRMAN LUNDEEN: The next item on the
9 agenda -- thank you very much -- is a discussion
10 regarding potential revisions -- thank you. The rules
11 for the READ Act. I understand there's strong support
12 for the proposed revisions, both among my colleagues on
13 the board and in the field. However, there have been
14 lingering questions and concerns regarding the legal
15 basis for the proposed revisions. In order to reach
16 clarity, I've requested that the commissioner request a
17 formal opinion from the office of the Colorado Attorney
18 General regarding the proposed revision.

19 My hope is that by requesting a formal
20 opinion over the summer months, that there will be
21 little, if no, disruption in the field while we obtain
22 the formal opinion. It would be ideal to have the formal
23 opinion in hand prior to the August board meeting. Once
24 we've received the formal opinion it will be released to
25 the public. I understand there are individuals here



1 today who would like to speak to the revisions. We'll
2 take public comments out of order for those who are here.
3 Those wishing to speak, please sign up for public
4 comments, and we'll take your comments once staff has
5 concluded.

6 If you would note, if it's the general
7 signup note, that you're on this --

8 UNKNOWN SPEAKER: Two separate sheets.

9 CHAIRMAN LUNDEEN: Two separate sheets.

10 Okay, just make sure you're on the sheet with regard to
11 the READ Act then. Those wishing to speak, please sign
12 up. Once staff has concluded its presentation, we'll
13 allow you to speak. The rules for engagement are the
14 standard; three minutes per speaker, please introduce
15 yourself, and for whom you may be speaking if you
16 represent an organization. At this point I'll turn it
17 over to the commissioner. Mr. commissioner.

18 COMM. HAMMOND: Good. Thank you very much,
19 Mr. Chair. We have Stihl Colling (ph) and Alisa Colesman
20 (ph). We want to give you some of the background in this
21 whole issue. But I have to say this has been somewhat of
22 a contentious issue, obviously. And with our school
23 districts who have expressed concern that the department
24 and its staff were exceeding statutory authority. And
25 whenever that happens it's my obligation as the



1 commissioner to involve the attorney general's office in
2 reviewing to see if that is, indeed, correct. That is
3 what's happened in this case, and we have an informal
4 opinion that, basically, concurred that we did exceed
5 that authority.

6 That said, it still has not resolved this
7 issue. And today we were going to go forth, at one
8 point, with the rule process, but in talking with the
9 chair, he's exactly correct, there's too much dissension
10 on this entire issue. Needs to be resolved and resolved
11 once and for all. And the only way we'll get there,
12 quite frankly, I think in our opinion, is through a
13 formal attorney general's opinion on this entire matter.

14 And then, for whatever aside -- I can say
15 there's winners and losers, but whatever side wins, then
16 the natural step is legislative action, really should
17 decide to do that.

18 So, anyway, I do have to say, Mr. Tony Dill
19 is here, who has done the informal opinion, and I
20 appreciate the research he has done. This was, I think,
21 took a considerable amount of time, because he really
22 wanted to take the time working with staff to really
23 understand, and he had met with staff to really
24 understand what are the issues involved that he's
25 rendering an opinion on. That he's done, and I think



1 he's done a very good job of trying to solicit that
2 opinion. Well, again, not everybody agrees.

3 But, as a part of this whole process, we
4 have representatives from districts who share our concern
5 about this whole matter, that they've wanted to express
6 and talk to you today, and I appreciate you doing that.
7 But after this meeting today, I will be pursuing a formal
8 opinion that I hope, with your support and everybody's,
9 we can get -- I'm basing on the board's reactions where
10 I'm asking for, quite frankly, to be expedited as quickly
11 as possible.

12 CHAIRMAN LUNDEEN: Sure. Yeah. Just as a
13 matter of scheduling if we could have it by August and,
14 you know, the challenging deadline, perhaps. But that
15 would enable us to keep moving without really losing time
16 or step.

17 COMM. HAMMOND: Right. But thank you. And
18 then what I'll do is turn it over to staff for just a
19 brief presentation, and then we have people here. And,
20 again, Mr. Dill (ph) is here should you have any
21 questions.

22 UNKNOWN SPEAKER: Okay. Mr. Chairman.

23 CHAIRMAN LUNDEEN: Please, go ahead.

24 UNKNOWN SPEAKER: Good afternoon. Members
25 of the board, I appreciate the opportunity to be here



1 today to give you some background on the English Learner
2 Literacy Taskforce that the department engaged and
3 precipitated this conversation that we have today.

4 I'll providing -- we'll be providing
5 information about the purpose, composition and initial
6 work of the taskforce for you. And, as you know, there
7 are members o the taskforce here, and obviously Mr. Dill
8 is here as well.

9 This past school year CDE engaged the task
10 force to --

11 CHAIRMAN LUNDEEN: Could you move that a
12 little closer?

13 UNKNOWN SPEAKER: Sure. Mm-hmm. Okay.
14 This past school year CDE engaged a task force to advise
15 the department on policy questions and support issues
16 related to English Learners. This task force was
17 convened at the request of school districts attempting to
18 implement the READ Act and the READ Act rules to best
19 support the language and literacy needs of English
20 Learners. The composition of the task force is two-
21 folded. We have CDE staff from the Office of Literacy,
22 the assessment unit, language, culture and equity office
23 and Title I office, as well as districts, the Aurora
24 Public Schools, Boulder Valley School District, Center
25 Schools, Cherry Creek School District, Denver Public



1 Schools, and Eagle County Schools, and a higher education
2 representative with expertise in English Language
3 acquisition.

4 The considerations that the department took
5 into account as we asked for members of this task force,
6 would be districts, obviously, with a significant English
7 Learner population. Districts representing different
8 regions and sizes, and districts who utilize different
9 models of language instruction education programs. Kind
10 of two primary models would be a bi-lingual model, which
11 could be a dual-language immersion, which is where
12 students are learning both languages, or a transitional
13 bilingual program where the program builds on the
14 student's native language and transitions them into
15 English.

16 So those would be bilingual models. The
17 other model would be an English as a second language
18 model where students are in a program where they receive
19 their instruction in English, they're taught English, and
20 they attend all English classes. It's important to know
21 that the participating districts have some of the highest
22 performing English Learners in the State. Our office of
23 literacy and our office accountability and data analysis
24 have completed some research to identify the top schools
25 in terms of English language acquisition as well as



1 reading achievement. And the districts that are
2 represented on this task force have some of those highest
3 performing schools in the state.

4 The initial work of the task force focused
5 on implementation of the READ Act for English Learners.
6 Two main issues were expressed by the participating
7 districts. The first was concern with over-
8 identification, or perhaps mis-identification of reading
9 deficiencies in English Learners and a concern with some
10 assessment policies. I'll first talk about the over-
11 identification, or concern about misidentification of
12 reading deficiencies in English Learners.

13 The concern that was raised by the task
14 force members would be that English Learners might be
15 identified with a reading deficiency when, really, the
16 greatest need of the child is English language
17 acquisition. The concern would be that schools would be
18 directed to implement interventions that may not be
19 appropriate for the child based solely on an English
20 reading assessment.

21 The second issue related to assessment, and
22 the -- specific to the volume of assessment that's
23 required, an issue that's obviously come before the board
24 on a number of occasions, and whether or not testing
25 policies could impact local control decisions about the



1 language instruction model that would be used in a
2 particular district.

3 Let me tell you a little bit about the
4 volume of assessment issue. And this is specific to
5 English Learners in Grades K-3 where the READ Act is
6 implemented. At the beginning of the year English
7 Learners who are in kindergarten, or new to a school,
8 would be administered the DAPT, which is a language
9 placement test. Also, pursuant to the READ Act, English
10 Learners would have the reading assessment just like all
11 other K-3 students to identify whether or not a student
12 is significantly below grade level.

13 At the middle of the year that READ Act
14 assessment is administered again, but also all students
15 who are English Learners in Grades K-12 are administered
16 the ACCESS test. At the end of the year, again, there's
17 a reading assessment for the READ Act, and third-graders
18 would also be administered the TCAP. So, the sheer
19 volume of assessment for English Learners was a concern
20 that was brought forward by the members of the task
21 force.

22 An additional concern was raised about
23 assessment requirements that may impact local control
24 decisions about the district's language acquisition
25 model. And this is specific to bilingual programs.



1 Because in addition to all of those assessments, a
2 bilingual program would want to know the child's reading
3 ability also in Spanish, which then adds another layer of
4 assessment. So, there could be some -- perhaps some
5 pressure to, you know, no longer use a bilingual or
6 bilingual transitional model.

7 So, some of the task force outcomes,
8 based on these concerns, were first focusing on
9 developing a guidance document for implementation of the
10 READ Act with English Learners to help address some of
11 these concerns. The guidance document was published in
12 February and will be revised for the '14-'15 school year.
13 But, essentially, I'll point out three things that the
14 document does that address some of these concerns. The
15 first was the document provides some guidance about how
16 to select the best instruction and intervention based on
17 the needs of the child, both in terms of their language
18 development, as well as their reading ability.

19 The second aspect of the document is that it
20 allows for the use of an English Language proficiency
21 data to invalidate a reading deficiency. So a teacher
22 who would be able to look at their student data, look at
23 -- that an English Learner may not be reading at grade
24 level, but they'd be able to bring in data from English
25 Language Proficiency Assessments to be able to say is



1 this a language issues, is this a reading issue, and
2 therefore provide the right intervention for the right
3 kids.

4 The third thing that the document and
5 guidance document allows for, and this is actually
6 similar to an allowance within CBLA, which is the -- a
7 local determination of whether or not to exempt students
8 who are in their first year in a U.S. school from kind of
9 the requirements of the READ Act to allow the district to
10 realize that the child who cannot assess -- I'm sorry.
11 Who cannot access the assessment itself, really that
12 assessment data is not at all useful.

13 But we still encourage districts to collect
14 the information they need to provide the best support for
15 kids. So past that guidance document there was still a
16 lingering question about the role of Spanish reading
17 assessments in the identification of a significant
18 reading deficiency. This question was specific to
19 language instruction models that provide reading
20 instruction in Spanish.

21 In December the department asked for legal
22 advice from the Attorney General's office regarding
23 whether the READ Act permits the use of Spanish Language
24 reading assessments to determine a significant reading
25 deficiency. The advice concluded that districts may



1 determine that a child has a significant reading
2 deficiency using only Spanish Language reading
3 assessments. The department reviewed the READ Act rules
4 in relation to this advice, and we see two areas where
5 the rules would be revised. First, Section 3.00 calls for
6 the determination of a significant reading deficiency in
7 English. Second, Section 9.01(d) indicates that Spanish
8 reading -- Spanish language reading assessments can be
9 used only to supplement, but not supplant English reading
10 assessments. So, these are the two main areas where we
11 see that changes would need to happen.

12 So what would likely follow, with any change
13 to the READ Act, would -- READ Act rules would be a
14 strikethrough of the word in English, and section 3.00,
15 and in Section 9.01 striking through the language that
16 specifies that Spanish assessments would be used only to
17 supplement, but not supplant English reading assessments.

18 That gives you some background on the work
19 of the taskforce, some of the issues that were raised,
20 and gives you some context for the legal advice that the
21 department sought. We have an opportunity now for the
22 board to ask questions. We also have members of the task
23 force here to provide their perspective on these issues.

24 CHAIRMAN LUNDEEN: I think you have
25 immediate questions of staff before we give public



1 comment? Okay. Angelika, please, go ahead.

2 MS. SCHROEDER: And I hope this is just a
3 clarifying question. My understanding in a dual immersion
4 is that theoretically they are have native -- half native
5 English speakers, and half native Spanish speakers who
6 are in the program and they are taught different areas in
7 different languages. So, if a reading assessment is
8 given in Spanish is that given -- is that being used to
9 identify a significant reading deficiency only for the
10 native Spanish speakers? Or are we saying that if that's
11 the assessment that's being given, that's for that entire
12 reading group? I'm not sure if that was a clear
13 question, but I think you know where I'm going.

14 CHAIRMAN LUNDEEN: I got the body of it.

15 UNKNOWN SPEAKER: Mr. Chairman.

16 CHAIRMAN LUNDEEN: Please.

17 UNKNOWN SPEAKER: So I think what we want to
18 be able to do through READ Act rule revisions, if
19 necessary, or required, or through our guidance document,
20 is just make sure that we're providing the -- a way to
21 identify whether or not a child is progressing
22 appropriately in their reading. So, for instance, for a
23 native English speaker who is learning Spanish, what we
24 would want to make sure is that the child is progressing
25 in their English reading appropriately. Ultimately



1 that's our goal throughout all of the work here. I don't

2 MS. SCHROEDER: Right.

3 UNKNOWN SPEAKER: I don't think that there's
4 any desire on a -- on the part of the department, or the
5 participating districts, to not have children to be
6 proficient in reading and English. That's our goal.
7 There are many paths to get there. I think what we
8 wanted to be able to do is for students who are native
9 speakers of Spanish receiving Spanish reading
10 instruction, is to ensure that we can identify whether or
11 not they're making sufficient progress in their reading
12 in order to determine whether an intervention is
13 necessary.

14 A transitional program for a student who has
15 a native -- a native Spanish speaker, they will
16 ultimately transition fully into English and the goal is
17 for them to be fully English proficient in reading.

18 MS. SCHROEDER: Okay, so you would probably
19 see two different assessments being used depending on
20 whether they were initially, in the early years,
21 depending on whether they were native English or Spanish
22 speaking kids. Most likely.

23 UNKNOWN SPEAKER: Mr. Chairman. I -- our
24 guidance document doesn't necessarily --

25 MS. SCHROEDER: Specify.



1 UNKNOWN SPEAKER: Yeah. Doesn't, yeah,
2 prescribe that. It allows for local determination based
3 on the needs of the child, and the needs of the program.

4 MS. SCHROEDER: Thank you.

5 CHAIRMAN LUNDEEN: Marcia.

6 MS. NEAL: I was just curious, and I don't
7 know maybe if I'm asking this, what exactly is it that
8 we're asking Tony? What is the problem that we're -- we
9 want Tony to clear up for us?

10 CHAIRMAN LUNDEEN: Well -- you want to take
11 that? I'll take that one, go ahead.

12 MS. NEAL: Or Tony can.

13 CHAIRMAN LUNDEEN: Or Tony, you're the one
14 who's being asked the question. You take that.

15 UNKNOWN SPEAKER: Well, I believe the -- an
16 informal legal opinion is essentially my legal opinion.
17 In fact, there's a -- there's a disclaimer in every
18 informal (indiscernible) into my office that says, "This
19 is the opinion of the authoring attorney, and is not an
20 opinion of the Attorney General." However, the head of
21 an executive department, including the Commission of
22 Education, can request a formal attorney general's
23 opinion, which is -- which is considered the formally
24 binding on the state. It is essentially considered the
25 final word in a particular legal area.



1 What is happening, as I understand, in this
2 area is given the controversy that my little old opinion
3 has aroused, that they would want -- that -- the decision
4 has been made to get something that would be a bit more -
5 - a bit more definitive. So what -- the process here is
6 that the commissioner will send a letter requesting a
7 formal opinion to Attorney General John Suthers, who will
8 then assign one of our attorneys to review and write the
9 opinion, and eventually that will be issued.

10 MS. NEAL: So the questions that you're
11 asking, like over identification of a person may not be
12 assessed correctly because of their language rather than
13 their ability. Are those the kind of questions we're
14 seeking guidance on?

15 UNKNOWN SPEAKER: So, Mr. Chair. So the
16 READ Act rules require that students are administered a
17 reading assessment in English to determine a significant
18 reading deficiency. The specific question is that
19 phrase, "In English".

20 MS. NEAL: Okay.

21 UNKNOWN SPEAKER: Specific to students who
22 are receiving instruction -- reading instruction in
23 Spanish, wondering whether it's appropriate.

24 MS. NEAL: Because you don't know if they're
25 not efficient -- deficient in reading or it's just a



1 language problem.

2 UNKNOWN SPEAKER: Exactly.

3 UNKNOWN SPEAKER: Correct.

4 MS. NEAL: And Tony's got to figure that all
5 out for us. Right?

6 UNKNOWN SPEAKER: MR. Chair.

7 CHAIRMAN LUNDEEN: Please.

8 UNKNOWN SPEAKER: I'll let Mr. Hill speak,
9 but in -- if I can say this in my language, in effect is
10 the READ Act an English only act, or not?

11 MS. NEAL: I see.

12 UNKNOWN SPEAKER: And in some regards -- and
13 so if you want to clarify that, because that is at the
14 heart of the opinion.

15 MS. NEAL: Well, I think that's -- with all
16 due respect, I think that's sort of reducing it a bit too
17 far.

18 UNKNOWN SPEAKER: Right. It is, that's
19 true.

20 UNKNOWN SPEAKER: The --

21 UNKNOWN SPEAKER: That's in a very
22 simplistic (indiscernible).

23 UNKNOWN SPEAKER: That's right. That's
24 right. I think that -- what I was really looking at,
25 first of all, is what does the text of the legislative



1 enactment require in these circumstances? And to do that
2 you look at the -- you look at the text of the
3 legislation itself. You look at legislative history of
4 that, and I did both of those, and then I think it's very
5 important to understand the context in which that
6 legislation, that particular act, is going to be
7 implemented in the field, especially in a case like this,
8 where you have -- you have essentially a state-level act
9 that is dealing with language acquisition, reading
10 acquisition. But you also have all these separate stand-
11 alone federal requirements for kids who have English as a
12 second language and how those two interact.

13 So what I did in reviewing this was look at
14 the legislation, look at the legislative history, talk to
15 people in the field to try to get an idea about the
16 context. And hopefully all that was reflected
17 (indiscernible).

18 MS. NEAL: And I see that, thank you. Made
19 it clear as mud.

20 CHAIRMAN LUNDEEN: Do have immediate
21 questions from Dr. Scheffel.

22 MS. SCHEFFEL: So, when I like at 9.01(e),
23 that requires testing in the student's native language
24 already, so that we're not preventing DPS or any other
25 district from testing in their native language. The



1 Spanish testing actually already has to be conducted in
2 the student's native language, whatever it is, but they
3 also have to test in English, and that was in CBLA, so
4 why would we be striking language supplement, but not
5 replace? I mean, we're already requiring that they test
6 in their native language. We're also requiring that they
7 test in English, so this change would strike the English
8 part. I'm not sure why that serves us or the students.
9 I think it would be detrimental, so I don't know what the
10 board thinks --?

11 UNKNOWN SPEAKER: If they don't speak
12 English why would we test them in English?

13 MS. SCHEFFEL: Because we want to -- because
14 --

15 CHAIRMAN LUNDEEN: Because --

16 MS. SCHEFFEL: Because the language of
17 instruction isn't just in Spanish in any school, so
18 that's why we want to know how they're progressing in
19 English. That's the outcome. Whether it be testing in
20 the native language and in the language of instruction.

21 CHAIRMAN LUNDEEN: Okay, so questions of the
22 staff, because we've got some people from the audience
23 who would like to participate. Do we have more questions
24 of staff right here?

25 UNKNOWN SPEAKER: No.



1 UNKNOWN SPEAKER: Was -- is this testing at
2 kindergarten, or third grade, or kindergarten through
3 third grade where we're doing in their native language
4 and in English.

5 UNKNOWN SPEAKER: Mr. Chair.

6 CHAIRMAN LUNDEEN: Please.

7 UNKNOWN SPEAKER: The READ Act applies to
8 all students in kindergarten through third grade, so this
9 would be at each grade level.

10 UNKNOWN SPEAKER: I agree with Dr. Scheffel,
11 we want to know how they're doing in both languages. And
12 I mean, I know it's anecdotal, but my son's kindergarten
13 class we had a Spanish girl walk in who had spoke no
14 English, and she was speaking English in three months, so
15 --

16 MS. SCHEFFEL: But determine -- this is to
17 determine the (indiscernible) we --

18 UNKNOWN SPEAKER: Oh, I understand, but we
19 would -- and we don't -- we don't necessarily know the
20 background, or the experience of every child who's
21 Spanish speaking. They may have a lot more knowledge of
22 the English language than we might assume. So, I think
23 makes sense.

24 CHAIRMAN LUNDEEN: All right, so from the
25 audience and to refresh your memory on the rules, three



1 minutes, please identify if you're speaking on behalf of
2 a group, or an -- and please identify where you're from,
3 if you're just speaking as an individual. This is
4 specifically for audience members with regard to this
5 READ Act discussion that we're having now. Holly Porter,
6 and then Amy Galicia (ph) is following Holly.

7 MS. PORTER: Good afternoon.

8 CHAIRMAN LUNDEEN: Good afternoon. Welcome.

9 MS. PORTER: I'm Holly Porter. I'm the
10 Director of English Language Acquisition for Cherry Creek
11 School District, and I have experience, just so you know
12 a little bit about me, I have experience as a bilingual
13 teacher, a classroom teacher, an ESL teacher, Title I
14 teacher, a teacher of the deaf. I was also -- I also
15 worked at CDE for a small stint for a few years in the
16 special education office, as their consultant for English
17 Language Learners with exceptional needs. So one thing
18 that I've learned through all of that experience, and the
19 time that I've spent around students and in schools, is
20 that I carry into my everyday life is just the necessity
21 to create those equitable opportunities for all students
22 to learn, and they all take different paths. And so of
23 course the READ Act requires proficiency, reading
24 proficiency, which is the goal of all of our programs.

25 And eventually the goal of all of our



1 programs is English proficiency in reading. But some of
2 the office for civil rights legislation and precedents
3 set by previous rulings also require that we have some
4 kind of flexibility in that, because we are looking at
5 English Language Learners and so my background in special
6 education, I always go back to that. And some of the
7 things that have set precedence in special education I
8 worry about a little bit with this act if we're not
9 careful.

10 One of the things is Diana versus the Board
11 of Education 1970, so that you can't use English only
12 assessments for special ed determination, and the IDEA
13 Act also says that assessments must be conducted in the
14 language and format most likely to yield accurate
15 results. So, in the same regard, I would think if we're
16 going to be identifying students with significant reading
17 deficiency we need to really be careful about identifying
18 students based on assessment in a language in which
19 instruction has not occurred.

20 And although we do not do bilingual programs
21 in our district we have students who come in, who've been
22 instructed, in Korea, in their native language in Korean,
23 very proficient in Korean, and I would hesitate to say
24 that they have a reading deficiency without the ability
25 to have some of the flexibility that Melissa talked about



1 with having -- being able to look at assessments in
2 another language.

3 And we also have to see if there hasn't been
4 -- if there has not been enough time for students to
5 attain proficiency, it takes several years, most of our
6 kids in our district -- we have high performing students,
7 but it still takes them three to five years to be
8 proficient in English in order to be at that level. And
9 so, if I could give you a scenario, we have a student
10 maybe who enters from Korea, reads fluently in Korean,
11 non-English proficient, they're identified with an SRD in
12 English, if we had no flexibility in those rules.

13 The following year, though, they score
14 higher, and they're no longer below that cut point for
15 significant reading deficiency, but the rules state that
16 you have to get to grade level in order to no longer be
17 considered a student with a significant reading
18 deficiency. And so, it's going to take that student
19 three to five years, potentially, to be at grade level in
20 English reading. And so, then we could potentially be
21 retaining this student.

22 Well Office for Civil Rights would have a
23 hay day with us if we retained a student based on lack of
24 English proficiency. WE cannot be doing that, and so I
25 foresee down the road that this could be discrimination



1 cases based on lack of English proficiency. If we start
2 retaining students, which is written into the law that
3 we're allowed to do that. Not that I would want to do
4 that, or I would not allow that to happen in my district,
5 but I could see that it could happen, and we could be in
6 some trouble for that.

7 So, although the students aren't being
8 identified for special education, I see some of -- some
9 similarities between those two things, and so I believe
10 that we really need to be looking at what is the dominant
11 language of the student. That doesn't necessarily mean
12 that they're proficient in that language, but what
13 language do they have the most proficiency in? And that
14 can be determined at the school level to say, "We've
15 given them informal reading inventories in English and
16 Spanish. We're instructing in Spanish, we're instructing
17 also in English at some point in their career, and we've
18 determined that they're still most dominant in Spanish."
19 That's the test we're going to use to determine whether
20 or not they have a significant reading deficiency.
21 Because we're talking about ability to read, not
22 necessarily ability to read in English.

23 And so, at that point we would be able to
24 say that they are most dominant in Spanish. And when
25 that turns to being more dominant in English or it's



1 equal, then at that point we would probably choose the
2 English assessment. So that would be my recommendation
3 for bilingual programs, and then also for --

4 CHAIRMAN LUNDEEN: And that needs to be your
5 final word.

6 MS. PORTER: Is that it? Sorry. Okay.

7 UNKNOWN SPEAKER: Can we ask questions?

8 CHAIRMAN LUNDEEN: We don't have -- yeah,
9 this is kind of a quasi-hearing. Please, let's keep them
10 brief.

11 UNKNOWN SPEAKER: So your example of the
12 Korean -- forgive me, I'm a little chilly, so I've got a
13 blanket around me.

14 MS. PORTER: I'm always that way, too.

15 UNKNOWN SPEAKER: So the example of the
16 Korean student, because they're -- we have multiple
17 languages in the State of Colorado.

18 MS. PORTER: Yep.

19 UNKNOWN SPEAKER: Was that student assessed
20 in -- you have an assessment in Korean to test the
21 reading ability of the Korean student?

22 MS. PORTER: We do have some more informal
23 tests that we use. We also have some tests that we've
24 worked with other countries to use the tests that they
25 use in their native languages. We don't instruct in



1 Korean, so I probably wouldn't be using that as my SRD
2 determiner, but I would like to use that as a body of
3 evidence to say that this English score is really, truly
4 not a reflection of their reading ability. It's their
5 reflection of not having enough English to be at grade
6 level in English.

7 And so, with the Korean student, because we
8 don't have a bilingual Korean program at this point, not
9 to say that we couldn't in the future, I don't know that
10 there are any approved assessments that we would use in
11 place of English. For our purposes we have mostly kids
12 who do not speak Spanish, so our district has 126
13 languages with 60 percent of them non-Spanish speakers,
14 and so we don't have bilingual, but if we went to that
15 point I would also like to entertain the idea of being
16 able to test kids, let's say, in Korean, because that's
17 one of our largest populations, if that's a possibility.

18 So, I think having that in the law that it's
19 in English only would prevent any bilingual program,
20 whether it's Spanish or another language, from being able
21 to assess in that language.

22 CHAIRMAN LUNDEEN: Okay. Amy Galicia, I
23 think.

24 MS. GALICIA: Hi. I'm Amy Galicia. I have
25 worked all across Colorado supporting emerging bilingual



1 students, their teachers, and their principals. I
2 currently work on the western slope at Roaring Forks
3 School Districts as the English Language Development
4 Facilitator. The rules of the rule act are important for
5 every district across the state. I will now share with
6 you what the proposed changes in the rules are not doing.

7 The proposed changes are not interfering
8 with the purpose of the READ Act, which is to ensure that
9 children are proficient readers my third grade. The READ
10 Act is about using data that help teachers identify
11 students who might be labeled significant reading
12 deficient, or SRD. If a child is identified as SRD, then
13 the student receives a reading intervention. The
14 proposed changes are not arguing against that. Rather
15 the proposed changes support what we know about children
16 who are not yet proficient in English. If an English
17 Language Learner is receiving literacy instruction in
18 their first language, any reading deficiency can only be
19 identified and addressed in their first language.

20 The proposed strikethrough of "in English"
21 supports what we know about helping children read. The
22 proposed changes are not forcing a specific program
23 delivery model for emerging bilingual students. Which
24 would be contrary to local control. Rather striking the
25 proposed changes from sections 3 and 9 ensures that



1 school district have the option to implement research-
2 based delivery models for English Language Learners of
3 their choice.

4 Districts choose delivery models that are
5 best for the population of the local community, and that
6 are supported by parents and families. As the rules
7 currently read local school district would be dissuaded
8 to continue to implement solid first-language literacy
9 programs that have been proven results of helping
10 children become proficient readers in English by third
11 grade.

12 The proposed changes are not misguided. The
13 proposed changes simply make sense. We assess our
14 children in English annually with the ACCESS and often in
15 the classrooms. The proposed changes are not about
16 assessing in English or assessing in Spanish. The
17 proposed changes are about reading and helping children
18 read better.

19 I am hopeful that Colorado has an impartial
20 board that understands the unintended consequences that
21 may result from promoting one way of meeting student's
22 needs over another. If the board decided to promote
23 wording that supports one method over another, then the
24 board, in fact, would be misleading us, attacking local
25 control, and going on the READ Act legislation.



1 I am pleased you have taken the time to hear
2 from stakeholders and constituents in the state. Please
3 keep in mind the intent behind the proposed changes will
4 allow teachers to help students read. It will allow
5 districts to choose the best way to help children become
6 proficient readers, and it allows us to use solid
7 research to make those decisions. That is good for
8 children.

9 We, from across the state on the Western
10 Slope, we urge the board to adopt the changes to the
11 rules as they are proposed because that is what's best
12 for our kids. Thank you.

13 CHAIRMAN LUNDEEN: Thank you. Jorge Garcia.

14 MR. GARCIA: Thank you, Amy, and forgive me
15 if I repeat a couple of things. And I must -- if I heard
16 Tony right, I must disagree slightly. The READ Act
17 legislation is not about reading and language. It is
18 only about reading. And to paraphrase what's already
19 been said, children learn to read in any language.
20 Reading is different than language proficiency. So, the
21 testing of reading skills is different than the testing
22 of language skills.

23 As Holly pointed out, that's why we have an
24 ACCESS test for language, a reading test for reading,
25 another ACCESS test for language, another reading test



1 for reading, because they are different skills.

2 There's universal agreement backed by
3 extensive studies and research among educators, testing
4 experts, and psychometricians that for students who are
5 not English proficient, for students who are not English
6 proficient, any test in English is a test of English.
7 These studies show that when we attempt to test a student
8 who is not proficient in English, if we attempt to test
9 them in English, the results will be what the student
10 knows about English language proficiency, not what they
11 know about reading. The READ Act needs us to not --
12 excuse the negative. But we are not supposed to identify
13 students as having a significant reading deficiency -- we
14 are not supposed to retain them because of language.

15 So, if we don't use a Spanish assessment for
16 students then we're assessing them for English
17 proficiency, but we can't identify them because of lack
18 of English proficiency, so what would we, in fact, be
19 doing? We would be denying these students the benefits
20 of the interventions called for in the READ Act, because
21 they would not be identified as having a reading
22 deficiency unless they're assessed in English.
23 Therefore, no student who's not already English
24 proficiency could benefit from the resources of this act.

25 So, if the rules stand as they are students



1 will be harmed. Thank you.

2 MS. NEAL: Can I -- can I ask a question?

3 MR. GARCIA: Yes, yes.

4 MS. NEAL: I just -- you make a lot of
5 sense, but I was just thinking do you have -- when do you
6 begin to test them in English? I mean, how do you know
7 when that time period occurs?

8 MR. GARCIA: Students are assessed for
9 English proficiency on an annual basis, so every year --
10 and, as Holly pointed out, in the classroom on a
11 continuous basis. So, the students are continuously
12 being assessed --

13 MS. NEAL: On (indiscernible).

14 MR. GARCIA: And when the determination is
15 made that they are English proficient then we can be
16 assured that a test of reading skills will result in
17 results about reading skills.

18 MS. NEAL: Thank you. I under -- that makes
19 a lot of sense.

20 CHAIRMAN LUNDEEN: Administrative question.

21 MR. GARCIA: Yes, sir.

22 CHAIRMAN LUNDEEN: Jorge, where are you
23 from?

24 MR. GARCIA: I'm the Director of the Bueno
25 Policy Center in the University of Colorado at Boulder.



1 CHAIRMAN LUNDEEN: Okay.

2 MS. NEAL: Thank you.

3 CHAIRMAN LUNDEEN: Next is -- looks like
4 Susana Cordova.

5 MS. CORDOVA: Good afternoon. I'm Susana
6 Cordova. I'm the Chief Academic Officer in the Denver
7 Public Schools, and I'd like to thank you for this
8 opportunity to share with you the perspective of the
9 Denver Public Schools on the READ Act and how the use of
10 Spanish Language Assessments supports our collective goal
11 of increasing the number of English Learners who meet
12 grade-level expectations by third grade, and also gain
13 English reading proficiency.

14 There are over 126,000 English Learners in
15 Colorado, and the Denver Public Schools had 31,000 plus
16 of those students, and we represent 25 percent of the
17 total English Learner population of students in the
18 state.

19 Quoting directly from our English Learner
20 Acquisition Program Federal Consent Decree, the DPS
21 English Language Acquisition Program is transitional and
22 in that its goal is to use efficient and effective
23 techniques to provide students with the English language
24 skills they need to meaningfully and equally participate
25 in the districts mainstream program.



1 Our goal is to ensure that students have the
2 instructional programs that build on their home language
3 as an asset, and support the acquisition of English at
4 high levels, both English language proficiency as well as
5 English reading proficiency.

6 In DPS we offer parents the choice of
7 transitional native language instruction and support of
8 English instruction. After our initial WAPT assessment
9 results are available, parents can also wave services.
10 What we find for our K-3 students, is that about 50
11 percent of our families select transitional native
12 language instruction. About, a little less than, 50
13 percent select supported English instruction, both
14 Spanish speaking families as well as speakers of other
15 languages, and after WAPT we have less than 2 percent who
16 wave services.

17 We know that English Learners by definition
18 have more to learn than their native English-speaking
19 peers. They need to learn both the content for their
20 grade level, as well as the English language to express
21 their knowledge of that content. They are expected to
22 perform at the same level of standards as their peers,
23 and they can. At the same time, we know that we must be
24 effective and efficient in how we use time, to ensure
25 that their instructional needs can be met.



1 Using Spanish literacy assessments as data
2 to support English reading proficiency may seem
3 insufficient, however we have many multiple data points
4 to consider why this is an effective and efficient way to
5 support our English Learners in our transitional native
6 language programs.

7 There's an increasing body of research on
8 how best to support students who are learning to read in
9 English when it's not their first language. Diane
10 August, Margarita Calderón and Maria Carlo have all well
11 documented how skills learned in English -- in Spanish
12 transfer to English and, in fact, help create a
13 foundation for a stronger performance in both languages.
14 In fact, their research has shown that students with the
15 highest Spanish passage comprehension in second grade
16 later have the highest English passage comprehension in
17 fourth grade when compared with students who were taught
18 only in English. Their findings indicate that giving
19 Spanish speakers instruction in Spanish is, in fact, an
20 effective and efficient manner to help them gain literacy
21 skills both in their native language, and in English.

22 In DPS we've been developing our own body of
23 research on our own students. Native Spanish speaking
24 English Learners who scored at initially the SLA 1, 2, 3
25 levels in second grade were more likely to perform at a



1 higher level on Spanish lectura in third grade, but they
2 also outperformed their English learner peers in TCAP
3 reading in fourth grade. In addition, these students
4 continued to have that gain into fifth grade as well.

5 In the 2014 TCAP reading and lectura
6 results, the ones that we just received, our current
7 English Learners saw a three percentage point increase in
8 students scoring at proficient or higher on TCAP and are
9 re-designated and exited English Learners saw a one point
10 gain. Our lectura students increased more than 5 points,
11 from 13 to 14. And so, we are seeing strong results both
12 in native language and in our work with English Learners
13 who are learning to read in English as well.

14 In addition, the focus on literacy developed
15 in native language we've also placed a great deal of
16 emphasis on language and literacy development in English.
17 We continue to look at our ACCESS results, and we found
18 very strong correlations between a student's ACCESS
19 trajectory and the proficiency on state assessments of
20 content. Our ACCESS scores rose dramatically this year,
21 and our bridging and reaching scores now outperform the
22 state's scores. In fact, every grade posted an increase
23 in the number of students who are proficient advance,
24 with the largest increase being among our third-graders,
25 who posted a 19-point gain on ACCESS assessment this



1 year.

2 We continue to monitor how on track our
3 students are with ACCESS, because we understand how very
4 critical and pivotal English language acquisition is.
5 And what we also see is that our students who are
6 receiving instruction in Spanish in our transitional
7 native language programs are more on track in English
8 than their peers who are instructed in an all-English
9 medium. Our two-year trajectory shows that 92.4 percent
10 of our third-grade Spanish instruction students are, in
11 fact, on track with ACCESS. This correlates very well
12 with the results that we're seeing on TCAP reading as
13 well as TCAP lectura.

14 And I just wanted to wrap up by saying we
15 support these recommended changes, we support both the
16 flexibility of looking at English assessment data with
17 language assessment data for our students who are
18 instructed in English, as well as looking at Spanish
19 assessment data for our students who are learning to read
20 in Spanish. Thank you.

21 CHAIRMAN LUNDEEN: Thank you, Susana. Julie
22 Benmilla (ph). Am I close?

23 MS. BENMILLA: Close, good.

24 CHAIRMAN LUNDEEN: Little hard to read.

25 MS. BENMILLA: Yeah. It's my writing,



1 sorry. Good afternoon and thank you for welcoming. My
2 name is Julie Benmilla, and I work for Boulder Valley
3 School District. I'm a bi-literacy specialist on the
4 district literacy team.

5 CHAIRMAN LUNDEEN: Thank you.

6 MS. BENMILLA: Okay. I'm here today in
7 favor of the proposed changes. The READ Act -- let me
8 turn this down. The READ Act was created with the
9 intention of identifying providing early intervention for
10 struggling readers. As such, it's imperative that the
11 focus of the READ Act continue to be reading. For the
12 emergent bilinguals in Boulder Valley School District and
13 across the state, the opportunity to receive primary
14 language literacy instruction in Spanish is extremely
15 valuable and fully supported by research in the field of
16 second language acquisition.

17 Students in our English and Spanish
18 bilingual education programs gain access to core
19 instruction from day one, developing strong literacy
20 skills in Spanish while simultaneously acquiring English
21 through English language development and English literacy
22 instruction. Furthermore, 40 percent of the emergent
23 bilinguals in Boulder Valley School District are in
24 bilingual programs receiving Spanish literacy
25 instruction.



1 In order for our emergent bilinguals to
2 receive the full benefit of the READ Act we must focus on
3 reading ability. In order to do that it's critical that
4 a student's possible reading deficiency be identifiable
5 in Spanish.

6 The READ Act is not legislation pointed at
7 language acquisition; it is legislation pointed at
8 reading ability. Our state has assessment firmly in
9 place for English language acquisition. We must also
10 have assessment firmly in place to accurately identify a
11 student's reading needs and strengths through assessments
12 in both English and Spanish in order for students to
13 fully benefit from this act.

14 It is unjust to only provide the ability to
15 identify and intervene for reading deficiency in English
16 when we cannot accurately ascertain English reading
17 ability from an English-only assessment. We cannot
18 ascertain whether it is due to reading ability or due to
19 language level.

20 If we continue on a path of only using
21 English reading assessment this will lead to mis-
22 identification of student's reading abilities. It is not
23 focusing our attention on the true purpose of the READ
24 Act, and denies ELLs their educational rights, we
25 believe. Thank you.



1 CHAIRMAN LUNDEEN: Thank you very much.

2 MS. NEAL: Thank you.

3 CHAIRMAN LUNDEEN: Are there other item --
4 other questions, or discussion at this point that -- we
5 will -- this will be scheduled for a notice of rulemaking
6 at our next board meeting, so the conversation will
7 obviously continue, so I don't know that we want to push
8 further into it right now, but I would give board members
9 and the commissioner an opportunity to make any final
10 comments if they'd like. Mr. Commissioner.

11 COMM. HAMMOND: Question. Do you -- this is
12 just clarification. Do you want to go for a notice of
13 rulemaking at the -- until we -- at the next meeting,
14 which is August.

15 CHAIRMAN LUNDEEN: Well --

16 COMM. HAMMOND: Hope -- the hope is that
17 you'll have to --

18 CHAIRMAN LUNDEEN: Yeah. The eternal
19 optimist in me says that -- but quite frankly the
20 critical path is formal opinion, notice of rulemaking,
21 because then it's clean, we know what we're doing, it has
22 authority. So that's what we're seeking.

23 COMM. HAMMOND: Yeah. Okay, I apologize
24 (indiscernible).

25 CHAIRMAN LUNDEEN: Okay. So, agenda yet to



1 be set, but that is the intention. Elaine.

2 MS. BERMAN: So, comments and just so we're
3 all on the same page on this. Some board members are
4 requesting a formal opinion from the AG's office as to
5 whether we have exceeded our authority in the rules that
6 we have promulgated around the issue of assessment in
7 English only. Did I say that correctly? I'm trying to -
8 -

9 CHAIRMAN LUNDEEN: Not quite.

10 MS. BERMAN: I think we need to be very
11 clear about what we're -- what we're talking about.

12 CHAIRMAN LUNDEEN: Please, go ahead.

13 UNKNOWN SPEAKER: Well, that's a good
14 request.

15 UNKNOWN SPEAKER: That's -- well, I would
16 offer a --

17 MS. BERMAN: Go ahead.

18 CHAIRMAN LUNDEEN: We're going to the
19 lawyers, so let's let the lawyers speak.

20 UNKNOWN SPEAKER: Okay. The lawyer has not
21 actually seen the request for a formal Attorney General's
22 opinion, so I'm not entirely sure how the issue is going
23 to be framed. But I think that's a fairly accurate
24 presentation of how the issue ultimately arose when I got
25 involved in February and drafted my opinion. It was



1 whether or not the significant reading deficiency
2 assessment had to be done in English, or if, essentially,
3 the district could do it in English or Spanish as they
4 considered programmatic ___ for their programs.

5 MS. BERMAN: English or Spanish or any other
6 language. Or is this just Spanish?

7 UNKNOWN SPEAKER: It's just Spanish, because
8 they are required to use one of the tests approved by the
9 state board, and the state board has approved tests only
10 in English and Spanish, because those are the two that
11 are required by the READ Act. However, they are -- they
12 can also consider, I believe as you heard a body of
13 evidence, you know, as you're making this determination,
14 which I think might bring some else. But essentially the
15 two -- the two types of assessments under the READ Act
16 are in English or in Spanish.

17 CHAIRMAN LUNDEEN: And we'll just make sure
18 members of the board get a copy of the actual request,
19 and that'll --

20 MS. BERMAN: But so, Paul, because you were
21 going to -- so the way I did frame it was accurate,
22 because you were going to say something like maybe add to
23 it or subtract from how I've said it?

24 CHAIRMAN LUNDEEN: No, no. I think that's -
25 - I think that's fair. And what I'd just say is the



1 written page will be much more precise than this
2 conversation we're having right now. We'll get a copy of
3 that out to everybody.

4 From my perspective there's enough question
5 among board members, among staff members, among the
6 community at large, that we want to be clear. We want to
7 move forward on firm footing, and that's what I'm seeking
8 to do.

9 MS. BERMAN: And I think that's completely
10 fine to get a formal AG's. I mean I -- from an
11 individual board member perspective in terms of where I
12 stand on this issue, I have to say that the testimony
13 today was very powerful and very consistent that we are
14 not -- we're testing reading, we're not testing language.
15 And if someone can't read there's no point in -- there's
16 no point in testing them.

17 I visited a school very recently, past
18 month, Place School which has a ton of different
19 immigrants there, and the principal said to me, "Who in
20 the world passed a law to test kids that just came over
21 from Ethiopia and don't speak a word of English and
22 they're supposed to take a test and they come and they
23 say, 'I can't do this test. I don't speak any English.'"
24 And they said, "Who would -- who would do such a thing?"
25 I said, "It wasn't the state board. We would not be that



1 stupid. It was the state legislature who did that."

2 So, I mean, if you go out to the field and
3 you speak to principals and teachers, they're put in a
4 very tough position. So, I will look forward to the
5 formal opinion.

6 UNKNOWN SPEAKER: Mr. Chair.

7 CHAIRMAN LUNDEEN: I would just say to be
8 continued. If you have further comments, wrap it up.

9 UNKNOWN SPEAKER: But since I'm going to be
10 -- the responsibility falls on me to write the Attorney
11 General, okay. And basically, what it will say -- it
12 will take into account the opinion that has been the
13 informal opinion issued by Mr. Dill. And it clearly sets
14 forth in the first paragraph the purpose of that, but
15 it's really asking for that to be re-reviewed. We need
16 to think that through and how we write that, but it's
17 basically we have an informal opinion already, and it
18 does come down, in my opinion, and what others have
19 expressed to us, the department and it's staff have
20 exceeded the authority of the state. And that needs to be
21 put to bed whether that is indeed true, or it's not.

22 And it all focuses on, as Mr. Dill says in
23 his first paragraph, that determining whether a child has
24 a significant reading deficiency by testing that child
25 using only the State Board of Education approved interim



1 assessments norm for students who speak English as their
2 native language, whether the determination of whether a
3 child has significant reading deficiency, must be made
4 using the State Board of Education approved interim
5 assessments of English. It goes on, but it's really a
6 review of that opinion. So, thanks.

7 CHAIRMAN LUNDEEN: Dr. Scheffel.

8 MS. SCHEFFEL: May I ask, commissioner, for
9 clarification? It isn't that the staff has exceeded
10 their authority, it's that the board has written rules
11 that exceed. Isn't that correct? Isn't that what we're
12 looking at? The language in the rules that the board
13 approved that's -- that requesting a change. Isn't that
14 what's being reviewed in the subpoena?

15 COMM. HAMMOND: No. In the -- what's being
16 reviewed is the opinion and the execution -- that's
17 correct. The execution by staff. We have several
18 districts that believe as staff we have exceeded our
19 authority in what we are requiring of school district.
20 That has placed enough doubt in my mind, is why we saw it
21 in the first place, an opinion from the --

22 CHAIRMAN LUNDEEN: But at the end of the day
23 the rule is our --

24 COMM. HAMMOND: The rule --

25 MS. SCHEFFEL: The rules are ours.



1 COMM. HAMMOND: They're your-- our rules,
2 but it -- this -- and the reason why I feel strongly
3 about, also, in supporting of a formal opinion, is that
4 this has caused even a division in our staff of how this
5 is interpreted and needs to be resolved. Because it's
6 not healthy from both sides. Because this keeps on
7 lingering on, and it's not getting resolved, and it needs
8 to be resolved once and for all.

9 CHAIRMAN LUNDEEN: So, it's a clarification
10 that --

11 UNKNOWN SPEAKER: Of our rules.

12 CHAIRMAN LUNDEEN: That the rule as
13 promulgated by the board is exceeding legal authority.

14 COMM. HAMMOND: Right.

15 CHAIRMAN LUNDEEN: Okay. Thank you very
16 much.

17 COMM. HAMMOND: Good point.

18 MS. NEAL: Thank you all, very interesting
19 discussion.

20 CHAIRMAN LUNDEEN: We're going to take a
21 two-minute break, and then we will come back to a couple
22 BEST items, school finance items.

23 (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 April, 2019.

/s/ Kimberly C. McCright

Kimberly C. McCright

Certified Vendor and Notary Public

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