



Colorado State Board of Education

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COLORADO DEPARTMENT OF EDUCATION COMMISSION
DENVER, COLORADO
April 13, 2016, Part 1

BE IT REMEMBERED THAT on April 13, 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: Please come to order I
2 apologize to the audience both listening and in person.
3 Why we are starting late, we had significant traffic
4 issues from Members getting in today. Ms. Burdsall, would
5 you please call the roll?

6 MS. BURDSALL: Board Member Flores.

7 MS. FLORES: Here.

8 MS. BURDSALL: Board Member Goff.

9 MS. GOFF: Here.

10 MS. BURDSALL: Board Member Mazanec.

11 MS. MAZANEC: Here.

12 MS. BURDSALL: Board Member Rankin.

13 MS. RANKIN: Here.

14 MS. BURDSALL: Board Member Scheffel.

15 MS. SCHEFFEL: Here.

16 MS. BURDSALL: Board Member Schroeder.

17 MS. SCHROEDER: Here.

18 MS. BURDSALL: Chairman Durham.

19 CHAIRMAN DURHAM: Present. So a quorum is
20 present and all the Members of the Board are in
21 attendance. So we'll proceed to Item three, which is the
22 Pledge of Allegiance, and Dr. Scheffel, would you,
23 everybody, please rise, and Dr. Scheffel will lead us in
24 the Pledge of Allegiance.

25 ALL: I pledge allegiance to the flag of the



1 United States of America, and to the republic for which
2 it stands, one nation under God, indivisible, with
3 liberty and justice for all.

4 CHAIRMAN DURHAM: So we will now proceed to
5 (inaudible) here. Now proceed to the approval of the
6 agenda. Is there a motion to prove the agenda as
7 published? Yes. Dr. Schroeder has moved that the agenda
8 be approved. Is there a second?

9 MS. FLORES: I second.

10 CHAIRMAN DURHAM: There's a second by Dr.
11 Flores. Is there objection to the adoption of the
12 approval of the agenda? Seeing none, Ms. Burdsall, please
13 record a unanimous vote in favor of approving the agenda.
14 We now have the -- the item five, approval of the consent
15 agenda. Dr. Schroeder, if you'd like to -- if you don't
16 mind, proceed.

17 MS.SCHROEDER: I move to place the following
18 matters on the consent agenda. 13.01 regarding
19 disciplinary proceedings, concerning a license, charge
20 number 2013 EC 612, to signify acceptance and approval of
21 the terms and conditions of the settlement agreement by
22 directing the commissioner to sign the agreement.

23 13.02 regarding disciplinary proceedings
24 concerning an application, charge number 2014 EC 15.09,
25 direct department staff to issue a notice of denial and



1 appeal rights to the applicant pursuant to Section 24-4-
2 104 CRS.

3 13.03 regarding disciplinary proceedings
4 concerning license, charge number 2014 EC 2245, to
5 signify acceptance and approval of the terms and
6 conditions of the settlement agreement by directing the
7 commissioner to sign the agreement.

8 13.04 regarding disciplinary proceedings
9 concerning an application, charge number 2014 EC 2351,
10 direct department staff to issue a notice of denial and
11 appeal rights to the applicant pursuant to Section 24-4-
12 104 CRS.

13 13.05, regarding disciplinary proceeding-
14 proceedings concerning a license, charge number 2014 EC
15 2395, direct department staff and state attorney
16 general's office to prepare the documents necessary to
17 request a formal hearing for the revocation of the
18 holder's license pursuant to Section 22-60.5-108 CRS.

19 13.6 regarding disciplinary proceedings
20 concerning a license, charge number 2015 E.C 396, to
21 signify acceptance and approval of the terms and
22 conditions of the settlement agreement by directing the
23 commissioner to sign the agreement.

24 13.07 regarding disciplinary proceedings
25 concerning a license, charge number 2015 EC 1576 direct



1 department staff, and the state attorney general's office
2 to prepare the documents necessary to request a formal
3 hearing for the revocation of the holder's license,
4 pursuant to Section 22-60.5-108 CRS.

5 13.08 approve two initial and one renewal
6 request for an emergency authorization as set forth in
7 the published agenda. 13.09, approve the University of
8 Colorado Denver's request for culturally and
9 linguistically diverse bilingual education endorsement
10 program.

11 MS. FLORES: May I just, can I block that?

12 MS. SCHROEDER: Can I just finish?

13 MS. FLORES: Sure.

14 MS. SCHROEDER: Thank you. 14.01, approve
15 the Charter School Institute's request for waivers under
16 half of Montessori del Mundo, as set forth in the
17 published agenda.

18 14.02 approve the Charter School Institute's
19 request for waivers on behalf of New America School,
20 Thornton, as set forth in the published agenda.

21 14.03, approve the Charter School
22 Institute's request for waivers on behalf of The Pinnacle
23 Charter School, as set forth in the published agenda.

24 14.04, approve the Charter School
25 Institute's request for waivers on behalf of Salida



1 Montessori Charter School, as set forth in the published
2 agenda.

3 14.05, approve Jefferson County's R-1
4 request for waivers on behalf of Doral Academy of
5 Colorado, as set forth in the published agenda.

6 14.08, approve District 49's request for
7 early college designation for Pikes Peak College, as set
8 forth in the published agenda.

9 15.01, approve the appointment of the
10 Colorado Special Education Advisory Committee, Lindsay
11 Applebaugh, Mark Shardiay (ph), Carissa Clinton(ph),
12 McColl Dallick(ph), Laurie Ditterline(ph), Lynne Fisher
13 (ph), Rebecca Hall(ph), Chelsea Marks(ph), Michelle
14 Queckenbush(ph), Laura Weehan(ph), and Barbara Zayas(ph),
15 as set forth in the published agenda.

16 16.01, approve expenditures for up to
17 \$80,000 from the Mary Jones trust fund for the Talking
18 Book Library. This is the end of the consent agenda.

19 CHAIRMAN DURHAM: Thank you. Is there a
20 second to that motion?

21 MS. FLORES: I'd like to add another one.

22 CHAIRMAN DURHAM: We need a second and first,
23 and then we'll --

24 MS. FLORES: I second.

25 CHAIRMAN DURHAM: Okay. It has been seconded



1 by Dr. Flores. Of course, you have an addition or
2 deletion.

3 MS.FLORES: I have an addition --

4 CHAIRMAN DURHAM: Okay.

5 MS. FLORES: -- and that is 14.08. I wanted
6 to ask questions about the culturally and linguistically
7 but I'm sure that's mastered but I have questions about
8 the Pikes Peak Early College. The El Paso County School
9 District 49, and that's 14.08.

10 MS. SCHROEDER: Do you wanna pull that for a
11 vote, or do you have some questions?

12 MS.FLORES: I have questions.

13 MS. SCHROEDER: Do we have anybody who can --

14 CHAIRMAN DURHAM: Do you want to?

15 MS. SCHROEDER: -- from the staff who can
16 answer?

17 MS.FLORES: Even the staff can answer.

18 UNIDENTIFIED VOICE: Mr. Chair, I'll have to
19 do a little digging on that this morning. I'll --
20 Gretchen Morgan, who would be able to answer that is --
21 is out today. So I'll have to -- I'll have to look out
22 and see if I can get any questions. Maybe you and I can
23 talk about your questions. I can make sure they get
24 answered.

25 MS.FLORES: Okay.



1 MS. SCHROEDER: Do you wanna pull it for a
2 vote later, or do you wanna go ahead and approve it, and
3 then still ask questions?

4 MS. FLORES: I wanna ask some questions.
5 There are some issues, like big, big.

6 MS. SCHROEDER: So what sort of questions?
7 Do you want to pull this for a vote then? Hold off the
8 consent agenda?

9 MS.FLORES: Yes.

10 CHAIRMAN DURHAM: Okay. That's a proper
11 request consent agenda requires unanimous consent. So
12 that item, 14.08 will be removed from the consent agenda.
13 Is there a further motion? Yes, Ms.Rankin.

14 MS.RANKIN: 14.07 Eagle County School
15 District RE 50. I would like that to be included in the
16 consent agenda taken off the vote.

17 CHAIRMAN DURHAM: Okay. That's -- that's a
18 proper -- that's a proper motion. Is there objection to
19 the inclusion of 14.07 as a consent item? Okay. Seeing
20 none, 14.07 will be included in the consent agenda. Is
21 there, I'd say, we have a motion to second for the
22 approval of the consent agenda as amended. Is there any
23 objection to the adoption of that motion that does
24 require unanimous consent?

25 MS. BURDSALL: I have a -- I have a, I need -



1 -

2 CHAIRMAN DURHAM: Yes.

3 MS. BURDSALL: Dr. Flores mentioned another
4 one that I don't know what we ended up doing with it.

5 MS.FLORES: Oh, for that one I'm -- I'm okay.

6 CHAIRMAN DURHAM: We took 14.08 off the
7 consent. Oh, really? It was --

8 MS. FLORES: The other one. But that's okay.
9 I'm okay with that one.

10 CHAIRMAN DURHAM: Okay, good. So -- all
11 right so -- all right. So as amended, is there objection
12 to the consent agenda? Seeing none, the consent agenda is
13 adopted. We'll proceed now to -- let's see Ms. Burdsall's
14 report, Ms. Burdsall?

15 MS. BURDSALL: Thank you Mr. Chair. Good
16 morning, Chairman Durham, Members of the Board,
17 Commissioner Crandall. As always, please remember, please
18 speak clearly into your microphones and be sure they are
19 on when you are speaking.

20 In your Board packets you have the following
21 materials, your -- your quick glance expenses Board and
22 your events calendar. Also in your packets, and or
23 available on Board notes are the following materials,
24 7.01, a copy of the data privacy Bill, as well as the two
25 adopted amendments to the Bill which are sitting on the



1 bench before you.

2 For 9.01, a memo regarding the school and
3 district performance frameworks (inaudible) and
4 weightings and accompanying PowerPoint.

5 For item 12.01, a memo regarding the average
6 student's received act, listening to her in state
7 development plan, an accompanying PowerPoint that is
8 sitting on the bench before you.

9 For item 3.08, there's a memo regarding the
10 request for emergency authorizations for education
11 personnel. For item 3.09, you have a memo regarding
12 Colorado University Denver's request for culturally and
13 linguistically diverse bilingual education endorsement
14 program.

15 For items 14.01 through 14.05, you have
16 memos regarding the Charter School waiver, plus and
17 additional supporting materials for each of those to be
18 found at Board Docs.

19 For item 14.06, you have a memo regarding
20 Lewis-Palmer School district 38's waiver request to waive
21 22-7-1014(2)(a) CRS, and additional supporting materials
22 to be found at Board Docs.

23 For item 14.07, you have the memo regarding
24 Eagle County School District RE 50 days request for early
25 college designation for Eagle County Early College High



1 School East and West, and additional supporting materials
2 can be found at Board Docs.

3 For item 14.08, you have a memo regarding El
4 Paso County School district 49's request for early
5 college designation for Pikes Peak Early College, and
6 again, additional supporting materials to be found at
7 Board Docs.

8 For item 14.09, you have the students re-
9 engagement grant program 2015, 16 overview. A grant
10 recommendation list and accompanying PowerPoint.

11 For item 15.01, you have a memo regarding
12 the appointments to the Colorado Special Education
13 Advisory Committee and their application packets. For
14 item.

15 16.01, you have an overview of the new
16 region's first plan.

17 For item 16.02, you have a memo regarding
18 the notice of rulemaking for both rules, the operation of
19 school transportation vehicles, which is 1 CCR 301-26,
20 and to the annual inspection and preventative maintenance
21 of school transportation vehicles, which is 1 CCR-301-29.
22 A copy of the redline rules for 1 CCR-301-29. A copy of
23 the draft rules combining the two rules, and the last
24 one, (inaudible) related statutes to the rules.

25 For item -- and then for Thursday, for item



1 4.01, you have a memo regarding the CMAS (inaudible) --
2 high school science and -- science CAT scores sitting on
3 the bench before you, and then the accompanying
4 PowerPoint.

5 For item 6.01, you have a memo regarding the
6 rule-making hearing for the Bowling Convention and
7 Education Grant Program. A copy of the draft rules, a
8 crosswork of the statute draft rules. A letter jointly
9 submitted by CASE, CRSA, and CAES. Sitting on the bench
10 before you, and just so you know, we also received 144
11 comments submitted via online at Colorado, One Colorado
12 Form. Due to the volume of those comments, they are only
13 available on Board Docs. And then we also have a response
14 written on this document, which is sitting on the bench
15 before you.

16 UNIDENTIFIED VOICE: Are they forms?

17 MS. BURDSALL: Yeah, it's a form that, yeah,
18 they will go in and fill out. So that's why we only put
19 it at Board Docs. And that concludes my report.

20 CHAIRMAN DURHAM: Thank you. Any questions
21 for Ms. Burdsall? Thank you, Ms. Burdsall.

22 MS. BURDSALL: Thank you.

23 CHAIRMAN DURHAM: So we will now proceed to
24 legislative matters --

25 UNIDENTIFIED VOICE: Here.



1 CHAIRMAN DURHAM: Mr. Crandall, do you wanna
2 start or (inaudible).

3 MR. CRANDALL: We do have with us Mr. Chair,
4 Members of the Board, Jennifer Mello, who is a contract
5 lobbyist, had lots of conversations. It's been a very
6 busy one month since the last Board meeting. So I'm very
7 excited to hear the report from the time (inaudible).

8 CHAIRMAN DURHAM: Please join us.

9 MS. MELLO: Good morning, everyone? As
10 always, its nice to see you. The bulk of our conversation
11 today will be about House Law 1423, the student data
12 privacy Bill. It might not --

13 MS. SCHROEDER: I don't think you're on.

14 MS. FLORES: She's on but she's not --

15 CHAIRMAN DURHAM: Just not on today.

16 MS. FLORES: -- not close enough.

17 MS. SCHROEDER: Or not close enough for the
18 others.

19 MS. MELLO: Is that better? Okay.

20 CHAIRMAN DURHAM: There you go.

21 MS. MELLO: I find speaking with this thing
22 in my face incredibly awkward so I apologize if I
23 accidentally run into it. Okay. So again, the bulk of
24 our conversation today will be about House Law 1423, the
25 student data privacy Bill. Before I do that, I just wanna



1 note a couple of quick things.

2 First, the ongoing conversations between the
3 Joint Budget Committee, and the House and Senate
4 Education Committees had their last meeting -- their last
5 formal meeting this morning. Commissioner Crandall made a
6 presentation, it was very well received.

7 There was another presentation from an
8 expert from the National Conference of State Legislators.
9 As always, I will circulate copies of those to you as
10 soon as I get them. And the -- Representative Rankin and
11 Representative Hamner are proposing a piece of
12 legislation out of that body of work, that would
13 essentially direct the legislative staff to work on these
14 issues over the interim and prepare a report.

15 Again, we will get you a copy of that draft
16 Bill as soon as I -- I have a hard copy of it but I need
17 to get an electronic copy of it and will send them out to
18 you. It does require that those staff that work over at
19 the Capital consult with CDE staff. So there is a role at
20 the staff level for CDE in that conversation but it's
21 primarily led by the legislative staff folks at the Joint
22 Budget Committee leg. counsel and legislative legal
23 services. Second other thing I wanted to note is there
24 were two Bills --

25 MS. FLORES: May I ask a question? I'm



1 sorry.

2 MS. MELLO: Of course, you can ask.

3 MS. FLORES: Is that -- I am sorry. Is that
4 regarding House Bill 1423, the -- talking together about
5 that?

6 MS. MELLO: Mr. Chair, Dr. Flores. No, I'm
7 gonna get to House Bill 1423 in a moment but I was just -
8 -

9 MS. FLORES: Okay. You're talking about the
10 Rankin and the Hammer Bill.

11 MS. MELLO: Yes, Dr. Flores. That -- that has
12 been proposed has not been introduced yet and then there
13 is an outgrowth of the school finance conversations that
14 have been occurring at the Capital over the last three
15 months.

16 MS. FLORES: Thank you. Excuse me.

17 MS. MELLO: Of course. Of course.

18 MS. RANKIN: Excuse me. I have a quick
19 question too. You --

20 CHAIRMAN DURHAM: Ms. Mazanec.

21 MS. MAZANEC: Said -- you said earlier that,
22 I caught the tail in that something -- something required
23 the legislators to consult with CDE. Did you say
24 required?

25 MS. MELLO: Mr. Chair.



1 MS. RANKIN: What did you say about that?

2 MS. MELLO: Well -- I -- well, you know what?
3 I have the Bill draft right here, so let's just read it.
4 In preparing the report required in the section, the
5 Legislative Council staff shall work with the Department
6 of Education including taking into account information
7 received by the department in preparing the state
8 education plan.

9 MS. RANKIN: Okay. Thank you.

10 MS. MELLO: Now I do think they're open to
11 feedback on this draft. This has not been introduced yet,
12 it was distributed as a draft for feedback. So we will
13 get it to you electronically as quickly as we can. And
14 again, if you have questions or comments, happy to -- to
15 try to facilitate that.

16 So the next topic I wanted to discuss just
17 briefly is, there were two Bills introduced late last
18 night in the state Senate, they were related to charter
19 schools. Again, we will get those added to the chart as
20 quickly as we can, they just got right across the desk
21 about 8:00 p.m. and we will discuss those that are
22 alleged that have contact meeting next Wednesday. So just
23 wanted you to know those are out there. We've got a plan
24 for working them through our process. You may start
25 hearing about those from your constituents.



1 MS. RANKIN: Do you know anything about what
2 they are about? You gonna serve snapshots?

3 MS. MELLO: I want to be careful here because
4 I -- I know from conversations in the building, some
5 components of them but I wouldn't want you to take what
6 I'm about to say as a comprehensive. So -- so I know one
7 of the issues that they're trying to deal with is how
8 school districts share mill levy revenue with Charter
9 Schools. I think that is a rather significant component
10 of one of the Bills.

11 I think in broad terms, they're also trying
12 to think through the accountability system for charter
13 school, and just making sure that that works. I know in
14 no way shape or form, I think they're trying to suggest
15 charter schools should not be held accountable. I don't
16 think that's what these Bills are doing. But -- but there
17 is there was a word in their accountability. When I see
18 the Bills, I'll have a chance to understand them better
19 so and we'll get those out to you again as quickly as we
20 can.

21 MS. RANKIN: Thank you.

22 MS. MELLO: Of course. Things move very
23 quickly this time of year and so it's sometimes a little
24 hard for all of us to stay on top of it. Okay. So House
25 Bill 1423, Student Data Privacy Bill. The sponsors of



1 this Bill are Representative Alec Garnett, who is a
2 Democrat from Denver, Representative Paul Lundeen, Former
3 State Board Chair Republican from the -- the Northern
4 Colorado Springs area. I think would be a fair
5 description of his district. Senator Owen Hill is the
6 Senate Sponsor of the Bill. The Bill was introduced about
7 10 days ago. It was heard in the House Education
8 Committee on Monday. It passed unanimously. It was an 11
9 to nothing vote which I have to tell you is -- is rather
10 extraordinary. There aren't a lot of Bills on any topic
11 that passed out of House Education unanimously.

12 The hearing was -- was relatively short
13 considering the passionate feelings that exist on this
14 topic. It was about a two hour hearing. CAES testified
15 in support of the Bill, CASB testified in support of the
16 Bill, and then multiple parents testified in support of
17 the Bill, including Shirkey Sicher, who I know is someone
18 that's spoken to you all before. So all of those folks
19 said that they support the legislation. They all said,
20 "Of course we might want a little tweak here and there."
21 I mean, you know, I would characterize this Bill as one
22 where nobody is perfectly happy, everybody is pretty much
23 happy, and would prefer for a few tweaks. Of course, the
24 tweaks that one group wants would then be a problem for
25 the other group.



1 The Reps Lundeen and Garnett have done a
2 truly remarkable job in my opinion of really working hard
3 to create a balanced Bill. That is very tough in terms of
4 protecting student's data and enhancing the privacy
5 protections in existing law around that. But does it go
6 so far as to stifle innovation technology -- technology
7 innovation that can be used to help student learning.
8 That is admittedly a personal opinion which probably has
9 no place in this, but I just, having worked very closely
10 with them at your direction, it's been really nice to
11 watch them be incredibly thoughtful as they try to create
12 balance to these issues.

13 So that is kind of the big picture. The Bill
14 is next scheduled for a House Floor vote. I anticipate
15 that- that could happen any day now. We only have four
16 weeks left in session, so everything is going to be any
17 day now. Once the Bill passes the House, which I
18 anticipate that it will, it will move onto the Senate.
19 There will be an Education Committee hearing there as
20 well in a floor conversation there as well. So that's
21 where the Bill is in the process.

22 I am happy to talk about kind of the overall
23 structure of the Bill. It's a long Bill and it's a fairly
24 detailed Bill and I will do my best to answer any
25 detailed questions you have about it. But I thought in



1 terms of presenting it, it might be helpful just to focus
2 on kind of the big picture structure, so you can have
3 some sense of think of what the legislators are trying to
4 accomplish. I'm seeing nodding heads as if people think
5 that would be helpful so I want to proceed.

6 So the Bill has three major sections. The
7 first deals with the Department of Education and the
8 State Board of Education. As you all know, there is
9 existing state law around data privacy issues for the
10 Department of Education. That was a Bill that the
11 department worked on two years ago at the Capital. So you
12 all are actually the only entity right now that has any
13 requirements under state law around student data privacy.
14 This Bill enhances those, strengthens those in a couple
15 of different ways. One, it makes it very clear that you
16 cannot, neither the Board nor the department may enter
17 into a new contract that would not be in compliance with
18 these, with the provisions in the Bill. If there is a
19 material breach related to student data privacy of a
20 contract and I'm speaking now to -- to the Bill as it was
21 amended in the House Education Committee.

22 So if there is that material breach student
23 privacy, there's two things that can happen. Either you
24 will terminate immediately, or you will have a Board
25 policy around termination that includes a public hearing



1 about what happened, and what the -- you know, what the
2 consequences are. So as introduced, it was just to
3 terminate the contract. As amended, it gives you the
4 State Board, this applies also at the local level but
5 from memo, we're talking about State Board. You'll have
6 some ability to consider exactly what happened and to
7 make a determination as to how to proceed with the
8 contract. I think that's an important change that was
9 made to Bill in Committee on Monday.

10 Additionally, any sort of, so you have to
11 have, now the Department would have to have an agreement
12 with researchers. By under statute, you would have to --
13 they'd have to do that. And those agreements, this is
14 only in the realm of the PII of course. So if you've got
15 a researcher who's using PII, that researcher has to
16 comply with all the same terms that are imposed on
17 vendors. The primary one of which is he can't sell
18 personal data, you have to destroy the data when it's no
19 longer of use for the contract, those types of things. So
20 your staff could speak better than I could to.

21 I think the department had already been
22 doing some of this around the research agreements but
23 this makes it required as a statutory matter that, it's
24 not just for vendor contracts the Department and the
25 Board has, it is also for research agreements with



1 individuals and institutions. And then the -- the -- the
2 department right now is required to host vendor contracts
3 on the website. This adds all of those research
4 agreements and the data sharing agreements with other
5 governmental entities, all of that now as required, we
6 post on the web site. Again I think that -- that much of
7 that is already happening based on your direction to the
8 staff but this puts it into a Statute.

9 It is department staff level of the Bill
10 also does a couple of things. One, it requires that they
11 provide sample contracts to school districts, so that
12 school districts can be in compliance with the law.
13 Requires that they provide sample privacy policies to
14 districts, because one of the requirements on the school
15 focus is that they adopt privacy policies. And so this
16 department would have the job of just providing a sample.
17 I think the goal being to try to make that easier for
18 school districts at least give them a point of departure.
19 There's nothing in the law that says they have to adopt
20 the sample privacy policy. It's designed to be an
21 assistance tool not -- not a detailed mandate.

22 And then the department is also required to
23 provide some training to school districts and their
24 personnel around around data privacy issues. So those are
25 I think the significant changes I would highlight in



1 terms of how the Bill addresses State Board CDE. All of
2 the language in the Bill about what local education
3 providers, school districts need to do is brand new. So
4 currently nothing in Statute about what will districts
5 have to do as it relates to data privacy. So that's all
6 new. And there's similar requirements to what state, what
7 you all have been doing for a while.

8 So they have to post on their website a list
9 of all the data that they collect. They can only contract
10 with providers that meet the privacy requirements
11 contained in the legislation. The termination thing I
12 explain to you for -- for your contracts, same thing
13 applies at the local level. One of the key things the
14 Bill does, and this is not, this is groundbreaking, no
15 other state has looked at this way, is it distinguishes
16 between school service contract providers which are
17 essentially people that you have a contract with, be it
18 the State Board, this Department of Ed or District. So
19 you enter into a contract with them to provide a service.
20 So that's one category of providers.

21 The other category is what they call On-
22 Demand service providers. And -- and I can tell you in
23 conversation what is meant by that term in practical --
24 in a practical sense is apps, right? So when we're
25 talking about apps that teachers may use in their



1 classrooms, there's no contract, right, between the
2 school district and that app. And by dividing those into
3 two categories, the Bill allows for some regulation of
4 that app world, that no other state has managed to
5 accomplish to date. Every other state is simply not dealt
6 with that issue.

7 So thinking about the apps, school districts
8 have to provide a list of the apps that are used in their
9 district to parents. They have to do that twice a year.
10 If a parent has evidence that there's a privacy problem
11 with an app, right, if they have direct evidence that
12 this app should not be being used because it's collecting
13 a bunch of private data on my kid, there's a process
14 where they can go to the school district and try to
15 address that. If a school district ceases using an app
16 because of privacy issues, they put that on their website.
17 They also send that to the department who puts it on
18 their web site.

19 But one of the amendments that was added to
20 the Bill, I honestly forgotten when, but at some point.
21 It allows that app designer, provider, creator, to -- to
22 provide a response. It's designed to be kind of a
23 neutral. Just here's the information nobody is
24 investigating, nobody is judging. These folks made this
25 determination, here's what the app writer says, and all



1 that just is kind of out there for public information
2 purposes. Yes, of course.

3 MR. ASP: Mr. Chair, thank you. I have a
4 question there. What does it trigger? How much? Give us
5 an example of -- of a student using an app, when it would
6 cross the threshold into PII territory as opposed to
7 there's no online calculator. What -- what does the
8 student have to put in that -- that jumps into that
9 bucket?

10 MS. MELLO: Mr. Chair, Mr. Commissioner. Oh
11 boy, you're getting me a little out of my -- my expertise.
12 But here's the conversations that I've heard. Right. So
13 if you have an app that is collecting name and address,
14 name and address are defined as PII in this Bill. And
15 then if the app is -- is saying, you know, I mean, how
16 many of us actually read those privacy policies whenever
17 we buy an app? Most of us don't. But if that app says,
18 and we have the right to sell that data that -- that app
19 were it to be regulated by this Bill, would be in
20 violation of this Bill. So it's a little bit tricky, but
21 essentially the parent can say, well, wait a minute, this
22 is collecting PII, it's not using it consistent with how
23 the Bill would have it be used.

24 UNIDENTIFIED VOICE: Jennifer, let me just --
25 you give me enough to --.



1 MS. MELLO: Please.

2 MR. ASP: This is sort of how the real world
3 operates. And so, here's my big concern 99 percent of the
4 the time, the teacher has no idea what that app is sort
5 of used in that classroom. There are so many apps. Oh,
6 we were using one the other day, around cut paste a PDFs
7 class I was in. That was an app, and you had to put in
8 your e-mail address to -- to get to use this app. There's
9 a teacher in Berkeley in trouble office. Well, you know,
10 there are several apps out there around PDFs. Some
11 student goes to it, puts their e-mail address, gets it
12 and starts using it. Where's that line then?

13 Well, the teacher mentioned that you had
14 general category of PDFs or apps. I'm just worried that,
15 and this happens and let's face it all the time, we, in
16 the name of protection actually create this incredible
17 hindrance to technology, because that's not how the world
18 works for apps. How do we make sure that we haven't, you
19 know, we have a conversation of wine, but there's a
20 little -- little challenge in there?

21 MS. MELLO: Mr. Chairman, Mr. Commissioner.
22 You know, I think that those exact concerns were part of
23 the dialogue. So nothing in the Bill says teachers,
24 there's no, I mean the Bill is absolutely silent as it
25 relates to teachers being in trouble or anything like



1 that are being disciplined. It really is about districts
2 now kind of, I think have to go look within and figure
3 out how are we going to interact with our teachers to
4 figure out what's being used in the classroom.

5 And the testimony from the case
6 representative was, I think, really interesting on this
7 point. Because what he said is, what we've realized over
8 the last year, or so, is we probably need to get a better
9 handle on this. Some of us would have done it anyway.
10 This Bill of course requires that we do that. And I think
11 that's part of the soft touch, so it's not saying you
12 can't use it. Nothing -- nothing in this Bill says you
13 may not use this, but it is designed to bring some
14 transparency to what is being used, and to give parents
15 who have concerns about a particular app an avenue to
16 express those concerns. Still school district gets to
17 decide what to do about it. So there's nothing that
18 requires a school district to do anything.

19 MR. ASP: Just a quick follow up towards
20 that. I got my challenges, that's not the world of apps.
21 Apps were created on the fly thousands every day. So to
22 say school, it should, twice a year you must publish
23 those lists of apps. That's not even the real world that
24 kids live in, that you inform to us. And trust me, as a
25 guy with 13 kids, I'm bored about apps all the time, just



1 try to, you know, see what's going on there.

2 (Overlapping)

3 MS. MELLO: Mr. Chair. Absolutely.

4 (Inaudible) And I should have said, I think that I've
5 heard the sponsor say several times. Like this is
6 Colorado's first attempt at this. This is going to be a
7 last I'm going to have this conversation. Assuming this
8 Bill passes, there are going to be some unintended
9 consequences that are going to have to come back and be
10 fixed. And -- and I -- I think that, I mean, I'm so not a
11 technology person. I defer completely to your expertise
12 on that. I'm sure you're right. I mean, I write, I defer
13 to my nine year old's expertise on it as well, because
14 she's a whiz at apps and it makes me nervous. I feel like
15 I needed a class to help me figure out what she should
16 have and not have. So, you know, that's one of the place
17 where the Bill is trying to walk a line, and -- and, you
18 know, you all get to decide whether you think it's done
19 so appropriately. But.

20 MR. ASP: I do like like the Bill. I meant
21 to say, you know, a piece of it there just --

22 MS. GOFF: Well, I was at the hearing, and
23 one of the things I heard was that anybody can bring up
24 the app. Anybody. The parent, a child, a student, a
25 teacher, the school district, anybody can bring up. You



1 know, this is what this app is- is doing, and it's not,
2 you know, it's not conforming to statute. So it's up to
3 everybody to bring this up if they find it. If they find
4 that, you know, an app is not what it should be doing. In
5 other words, selling information to other parties inside.
6 So this has to be brought up by citizens and teachers and
7 the school community and the community at large. I wanna
8 be sensitive to time. So Mr. Chair, maybe just I'll try
9 to quickly finish describing what's in the Bill then I --

10 CHAIRMAN DURHAM: Dr. Schroeder.

11 UNIDENTIFIED VOICE 1: I'm sorry, I
12 apologize.

13 MS. SCHROEDER: So just listening to this
14 conversation makes me wonder whether in terms of the
15 training, training ought not include the warning that if
16 you're using an app or if your teacher is recommending a
17 particular program, if they ask for PII, may perhaps that
18 should be a flag. Just the fact that you're being asked,
19 either a student is being asked to put in personal
20 information or a teacher is putting in information about
21 his or her students, that's a kind of flag that calls for
22 either check one here, technology person if you're -- in
23 your school district if they have one, or that there's
24 some sort of response to that, that that becomes a
25 trigger as opposed to trying to look at this only from



1 the outside.

2 MS. MELLO: Up down.

3 MS. SCHROEDER: Shouldn't we be training our
4 kids and our staff that when they are inserting that kind
5 of information, they ask themselves the question, "Why do
6 I know that it's okay for me to do this?" And if they
7 don't have any answer to that that they go in order to
8 investigate further. It seems to me that that process
9 might provide a whole different approach to how we do
10 this.

11 CHAIRMAN DURHAM: Dr. Scheffel and Dr.
12 Flores.

13 MS. SCHEFFEL: So do we have time to keep
14 discussing this or we're trying to get through a number
15 of Bills?

16 CHAIRMAN DURHAM: We'll make time.

17 MS. SCHEFFEL: So thanks for the
18 presentations. I wasn't able to be at the meeting but I
19 try and follow the nuances of this legislation. Were
20 there other amendments that were introduced that are --
21 that were -- that are being considered? Did you addressed
22 those? Is that the --

23 MS. MELLO: Around here.

24 MS. SCHEFFEL: Have you already addressed
25 that?



1 MS. MELLO: Mr. Chair, Dr. Scheffel, I talked
2 about -- so there were -- there are two amendments that
3 we're adding committee one of which clarified this issue
4 around contract termination both at the local level and
5 the district level -- excuse me.

6 MS. SCHEFFEL: So the breach of privacy that
7 was at -- was at the --

8 MS. MELLO: Correct, correct. And I did e-
9 mail these to you all. So you -- it's -- I'm happy to
10 describe them, but you do have them somewhere in your
11 inboxes. The other thing the Bill did is -- in its
12 original form, the Bill said that if parents think that
13 data about their kid is inaccurate, they could go to the
14 vendor to correct it. The district said, "We'd really
15 much rather they come to us and we'll work with the
16 vendor.".

17 And I think from a parent perspective that
18 makes more sense too, right? Like as a parent, I know who
19 my school and my district is. I know and may not know who
20 the right person to call it whatever vendor is. So I
21 think that was a friendly amendment kind of from all
22 sides. The other thing that it did is, so the Bill -- we
23 haven't talked yet about the requirements on vendors,
24 there's a bunch. We'll leave it at that for the moment.

25 And then it applied both to the contractor



1 and subcontractors, but I think it was accidentally in
2 the drafting. If a con -- if a vendor discovers a privacy
3 problem with that subcontractor, there was no requirement
4 to disclose. So they added that in, that if there is a
5 subcontractor problem, you -- the contractor, the vendor
6 had to disclose it but it didn't -- it hadn't worked its
7 way through the language so that if a subcontractor makes
8 a mistake, that also has to be disclosed. I'm just
9 looking at these real quick.

10 I think in terms of the agreement, the
11 research agreements that the department may enter into
12 with researchers, language was added around department
13 shall implement the process subject to approval by the
14 State Board. So the department's gonna come up with some
15 process on that and then bring that to you all as their
16 bosses. I was trying to think of a better word, all I
17 could think of was overseers, which seem force the
18 bosses.

19 CHAIRMAN DURHAM: Dr. Flores.

20 MS. SCHEFFEL: Wait, I'm not finished.

21 CHAIRMAN DURHAM: I'm sorry. Yes, please
22 proceed.

23 MS. SCHEFFEL: So can you -- is it -- is it
24 the case that the way the people's legislation is
25 currently written that PII still could be shared out in -



1 - with out of state databases without parental consent?
2 That's something I'm hearing, that doesn't preclude that.

3 UNIDENTIFIED VOICE: It does preclude that, I
4 think.

5 MS. SCHEFFEL: I don't think it does.

6 MS. MELLO: Mr. Chair, Dr. Scheffel, I don't
7 wanna give you an input. Can I -- can I get -- I wanna
8 get the right answer and I'm afraid that if I do that off
9 top my head, it won't be right. So may I seek an answer
10 to that question for you and get back with you on that?

11 MS. SCHEFFEL: Right. And then I have
12 another question about the IRB. So right now, it's a
13 contract with the state, the IRB, in terms of an entity
14 doing research of data at CDE, and the state is -- the
15 burden of the IRB is on the entity, but CDE doesn't have
16 an IRB. Is there a discussion too at that back then? I
17 mean, that gives us a stronger view as a Board to review
18 and oversee research that's been conducted with data at
19 the state as opposed to the contract. The IRB process is
20 very different. Is there any appetite for that claim?

21 MS. MELLO: Mr. Chair, Dr. Scheffel, I think
22 that has been in conversation. So the Bill does talk
23 about IRB's in the context of research by higher
24 education institutions. And essentially it says that if a
25 researcher has gone through that process, that is deemed



1 sufficient to substitute for some of the other
2 requirements -- for the requirements the Bill in general
3 imposes on researchers. I think the thinking being that
4 those are -- I don't know which -- if one is better,
5 there at least equivalent. Perhaps one is even better
6 than the others, I don't know.

7 MS. SCHEFFEL: You mean the contract versus
8 an IRB?

9 MS. MELLO: Correct.

10 MS. SCHEFFEL: They're really not equivalent
11 at all.

12 MS. MELLO: Okay.

13 MS. SCHEFFEL: But I mean I'm just wondering
14 if anybody had surface on those entities.

15 MS. MELLO: I mean, I think that that's been
16 a topic of conversation. I don't -- my understanding is
17 there's not any plans to change the current language in
18 the Bill that, as it stands, individual researchers,
19 other researchers who go with the department have to do
20 an agreement and they are subject to all of these terms.
21 The IRB only comes into play in the Bill when it has to
22 do with higher education research.

23 MS. SCHEFFEL: Okay. And then finally, just
24 to come in on the commissioner's comment. I think, as I
25 read the Bill, the onus of the on-demand providers in the



1 Bill is put on the vendors to comply, not on the teachers.
2 So when we talk about, you know, this isn't reality or
3 whatever, the onus is on the vendor, not the teacher to
4 go and scurry around and figure out how this compliance
5 is gonna be, I think and rightfully so.

6 UNIDENTIFIED VOICE 1: Dr. Scheffel, just
7 real quick. I think you may be right, but the challenge
8 is the vendor of an app is a 13-year-old kid living in
9 Uzbekistan, who posted it to a -- you know, to the Google
10 Play Store. And so what do we -- I mean, how realistic is
11 this? And obviously, this has nothing to do with that.
12 This is -- I understand what we're trying to accomplish
13 here, I wonder if the language stays be rewarded in all
14 of this.

15 MS. SCHEFFEL: To the extent that even the
16 log ins of PII, that PII data can be shared out of state
17 without parental consent, then the individuals who
18 develop apps that are used in public schools need to be
19 more responsive and responsible with the kind of data
20 they're collecting and where it goes. So I get it that
21 kids develop apps, but I'm just saying that this is a
22 public entity and, you know, when we have data being used
23 for various purposes, I think we have to, you know, be
24 diligent and how it's used and where the onus is. So that
25 was that.



1 CHAIRMAN DURHAM: Dr. Flores.

2 MS. FLORES: So one of the -- one of the
3 things that I know, they were talking about that this was
4 not gonna cost money but I think it's gonna cost money. I
5 mean, you're gonna train teachers. And if the state is
6 going to be responsible according to what the legislation
7 says, then there should be monies attached for the
8 department and for the training. I mean, there's money
9 out there, and yet it went off as there's no cost and
10 there is cost.

11 And suppose somebody wants -- I mean, I was
12 just thinking, according to how it's written, people
13 could ask, I just wanna, you know, I want the department
14 to come out here and really train the people because
15 we're really concerned about this. And I think that that
16 seriously needs to be looked at because we're already --
17 I mean, I think the department may not have the resources
18 kind of in that area, and that needs to be looked at.

19 MS. MELLO: Mr. Chair, Dr. Flores, I think
20 there was some testimony -- interesting testimony to that
21 point that came from the school district representative
22 talking about, because the Bill does not come with
23 additional resources, there was gonna be a need for
24 patience that because both school districts in the
25 department would be implementing this within current



1 resources that, you know, none of this would happen
2 overnight. And I understand your point, and so I just
3 wanna make your colleagues aware that that's how that
4 topic was discussed in the hearing.

5 I think it's also important to note that
6 when the department prepared its fiscal note, it listed
7 some assumptions that relate to this, and that is that
8 the training that they're being asked to provide under
9 this Bill is consistent with what they're already
10 planning to do based on Commissioner Crandall's direction.
11 So if that assumption was not be true, I think the -- one
12 could refer back to that fiscal note in the future and
13 say we're getting much much more requests and then have
14 that conversation to the budget process. So that's I
15 think how the fiscal issues have been addressed today.

16 CHAIRMAN DURHAM: Okay. Ms. Mello, I've
17 observed that I think probably the legal and the
18 practical cutting line on this is if the teacher says I
19 suggest it or and says depending on whatever language is
20 that you use app X, I think there's some responsibility
21 that accrues to the district and they should be cognizant
22 of what's going on and careful about monitoring what's
23 going on. There's simply no way to prevent a student from
24 accessing whatever app they want. It's not -- and
25 frankly, that's an issue between the parent and the



1 student and not the -- not the state and the student, and
2 I don't know how we would involve ourselves in that. So I
3 think the practical side of the Bill is pretty simple if
4 the districts or its representatives are involved in
5 pushing something, they're gonna end up with some level
6 of responsibility.

7 MS. FLORES: Mr. Chair?

8 CHAIRMAN DURHAM: And that's where the
9 training comes. Dr. Flores.

10 MS. FLORES: I think there was mention that
11 parents have to be trained as well. So the legislation
12 assures, you know, districts that -- the district is
13 responsible I think for training the parents, and the
14 department is responsible for training the district. So
15 there's a chain there, and I think monies are going to be
16 much more than zero.

17 CHAIRMAN DURHAM: Thank you. Ms. Mello, any
18 other?

19 MS. MELLO: Well, I serve at your pleasure.
20 I have yet to describe the vendor requirements in the
21 Bill, would that be helpful?

22 CHAIRMAN DURHAM: I think that would.

23 MS. MELLO: Okay. All right. So we'll --
24 I'll try to do that as quick as I can. So note,
25 everything I'm talking about right now relates to school



1 service contract providers so the folks that there's a
2 contract with. So we're not talking about the apps right
3 now. We should be clear about that. So they have to
4 provide information about the types of PII that they
5 collect and the learning purpose for that information.

6 The way the Bill is structured is they
7 provide that to the district that that puts it on their
8 website, again because parents wanna go to the district
9 website. They don't wanna have to find some vendor
10 website. But if the onus is on the vendor to prepare that
11 in a form that ideally the school district just -- they
12 probably do more than copy and paste, again I'm no
13 technology expert, but something equivalent to copy and
14 paste to put it up on their website. School service
15 contract providers may collect, use, and share student
16 PII only for purposes authorized in a contract or with
17 the consent of the student or student's parents. School
18 service contract providers may not sell student PII, use
19 or share student PII for purposes of targeted advertising
20 to students, or use student PII to create a personal
21 profile of a student other than for sporting purposes
22 that are addressed in the contract.

23 There are a few exceptions to that. So if
24 they get a court order, they have to disclose. We did get
25 some language inserted into an earlier draft to the Bill



1 based on some great feedback from Board Member Rankin
2 that if -- if that PII does have to be disclosed in a
3 judicial context, the parent should get notified about
4 that. So that's in the Bill. School service providers
5 have to maintain a comprehensive information security
6 program. They shall destroy student PII within the time
7 period specified in the contract or at the point where
8 that data is -- the purpose of the contract has been
9 fulfilled. So there's a data destruction requirement in
10 the Bill.

11 So those are -- I mean, I'm giving you the
12 highlights, but those are essentially the requirements
13 around inventors and researchers. Remember, because at
14 the beginning of the Bill, it talks about researchers
15 working with the department and have to comply with all
16 of those things as well. So the only group that did not -
17 - that testified on Monday but they did not support the
18 Bill. They testified in an amending position, which is a
19 soft oppose, I will just -- I mean, that's my
20 interpretation, it's not what they said, but that would
21 be my interpretation of what amending means, was the
22 Software Industry Association.

23 So the technology folks have some concerns
24 that they think this Bill goes too far. They don't like
25 that the definition PII is different from other states



1 because it's easier for them, understandably. I mean, I
2 get it, right? If I'm running an operation in 30 states,
3 I'd rather have the rules be the same. But I understand
4 where they're coming from. But I know that the
5 legislators who crafted this were very thoughtful about
6 the definition of student PII and are particularly
7 interested in changing it just to make it easier for
8 other folks. So that's I think a decent overview of the
9 Bill, and I'm happy to continue to answer questions or
10 dialogue.

11 CHAIRMAN DURHAM: Further questions about
12 House Bill 1423? Yes, Ms. Goff.

13 MS. GOFF: Yeah. Thank you. I don't really
14 have a question, I guess more of a comment that it could
15 be a question. The issue about the elimination or
16 termination of contract, we had -- we had talked a little
17 bit about that when we first got the Bill, but some
18 clarification about the prerogatives that either the
19 state, the department, or a district has. When we're
20 using termination of contract, I didn't -- I didn't
21 discern. I can -- I can look again of course, but any
22 real clarity about immediate versus after a period of
23 time where there's a review of the case.

24 And I'm just -- I'm thinking ahead, and the
25 other kind of tied in with that is the fact that if this



1 law should pass, probably will in some form, guess who
2 gets set to do rules. So we're gonna have plenty of
3 opportunity to really process through all of this. But I
4 think from the get-go, some clarity about the
5 determination -- we don't need to think about the -- the
6 aftermath or how the Bill ends up, whether or not -- how
7 did we -- I mean, we're gonna have to set some kind of --
8 some parameters for what has -- what is a breach, I
9 guess, and how do we know that? And how many of those
10 will we have in a years time?

11 I'm -- I'm being -- I'm looking at the
12 optimistic side. Is it how many? And what does
13 constitute grounds? How many people, for example, need to
14 draw it to somebody's attention before it becomes, you
15 know, when it -- when it becomes a viable case of breach.
16 I'm just -- I'm just concerned.

17 MS. RANKIN: A breach is a breach, as a
18 breach I think.

19 MS. GOFF: Well but -- but, yes. But I think
20 we're gonna have to have some sort of characteristics of
21 it or what is -- what is -- what is this breach? If it's
22 just PII, one student's PII, I don't know. I mean, I'm
23 saying this to be -- I do support this Bill. I think it's
24 a great start. I do understand and -- and I identify with
25 those who are saying oh, the what if's and the unintended



1 consequences. But I just want us to be prepared for that
2 because this is brand new, in many, many ways. Not all
3 ways --

4 UNIDENTIFIED VOICE 1: Right.

5 MS. GOFF: -- but many ways so.

6 MS. MELLO: I -- I would just note that
7 there's case law that I think will inform the definition
8 of material breach even when this Bill becomes law. I
9 think your -- your counsel over there, you might want to
10 have some conversations about how to perform that.

11 UNIDENTIFIED VOICE 1: Okay, and --

12 CHAIRMAN DURHAM: The Attorney General is for
13 Employment Act, so --

14 MS. GOFF: May I?

15 CHAIRMAN DURHAM: Yes, Ms. Goff?

16 MS. GOFF: Always something to do, right?
17 Legislative legal services in -- in the -- your
18 department and others, have we had any indication that
19 there's problems, shaky ground, new territory, possible -
20 -

21 UNIDENTIFIED VOICE 3: Minefields.

22 MS. GOFF: -- minefields?

23 CHAIRMAN DURHAM: Mr. Dill?

24 MS. GOFF: Pit holes, all those words.

25 MR. DILL: We had expressed some concern



1 about the effective to know this requirement, and that
2 there's -- there's no opportunity for a hearing before
3 the vendor who -- I guess, the breach agreement has --
4 has been posted and how to deal with that. The response
5 to that is to add language to -- to the Bill, to say that
6 when -- when that -- the vendor's name is posted, it must
7 be posted with a response by the vendor's, should the
8 vendor choose to -- to include one. If -- you know, if --
9 if the final version of the Bill, you know, if -- if the
10 feeling is that it proves it's insufficient, that perhaps
11 we could look at additional policies that would -- that
12 we could put into process that could be done by the
13 Department of State Board.

14 CHAIRMAN DURHAM: Thank you, Mr. Dill.

15 MS. GOFF: So the -- the -- sorry.

16 CHAIRMAN DURHAM: Go ahead.

17 MS. GOFF: The vendor's posting would be, at
18 whichever level, there's a problem. So in other words,
19 CDE, we would have -- if we have a problem over some
20 vendor and we need to post the response on -- it's at a
21 state level. If a district has a problem with the vendor
22 and --

23 MS. MELLO: Just to -- I'm sorry but I wanna
24 make sure we're -- that we're clear about what we're
25 talking about here because this only relates to on-demand



1 providers, right? So it is not about contractors. That
2 part of the Bill only relates to on-demand providers. And
3 if a district stops using it for privacy reasons, they
4 put it on their own website. They then send that
5 information to the department that is also required to
6 put it on its website --

7 MS. GOFF: Okay.

8 UNIDENTIFIED VOICE: -- along with a
9 response. So I -- I just wanna make sure --

10 MS. GOFF: That's important.

11 UNIDENTIFIED VOICE: -- we have the factual
12 context there. Okay?

13 MS. GOFF: Thank you.

14 CHAIRMAN DURHAM: Okay? Okay. Any further
15 discussion of House Bill 1423? Seeing no, is there a
16 motion on House Bill 1423. Yes, Ms. Goff?

17 MS. GOFF: I move that the Board adopt a
18 position of support for House Bill 16-1423.

19 CHAIRMAN DURHAM: So proper motions, is there
20 a second? It's been moved and seconded. Dr. Schroeder
21 have seconded. Is there an objection to the adoption of
22 that motion? Seeing none, then that motion's adopted by
23 votes seven to zero. Ms. Mello, you can go ahead to
24 communicate that to the sponsors and when appropriate to
25 Members of the General Assembly. We would appreciate it.



1 MS. MELLO: Absolutely, Mr. Chair. Thank you
2 all. We'll see you soon. I imagine.

3 CHAIRMAN DURHAM: Thank you. All right. Now
4 we will move to item eight, public comment. Ms. Burdsall,
5 do we have a sign-up sheet handy?

6 MS. BURDSALL: Yeah.

7 UNIDENTIFIED VOICE: We'll let you all know
8 that --

9 UNIDENTIFIED VOICE: Yeah.

10 CHAIRMAN DURHAM: I -- I can't make it work
11 so I've always robbed one while I'm trying.

12 UNIDENTIFIED VOICE: Okay. Do we have --

13 CHAIRMAN DURHAM: Which way do you wanna go?

14 MS. MELLO: So just did a quick update. The
15 Bill's being debated on the House floor right now. So
16 it's up for a second reading right now. So I'm gonna
17 hustle across the street. Make sure to let them know
18 about your position.

19 UNIDENTIFIED VOICE: Thank you. I'll -- I'll
20 tell.

21 CHAIRMAN DURHAM: That works. We're a little
22 behind time. But with any luck, we'll catch up here.
23 Let's start to -- yes, Ms. Goff?

24 MS. GOFF: I just wanted to share with you
25 that Ms. Mello, on her way out, the -- told us that



1 they're hearing the Bill right now --

2 CHAIRMAN DURHAM: Right.

3 UNIDENTIFIED VOICE: -- on the floor. So
4 just get going.

5 CHAIRMAN DURHAM: So -- so maybe in the
6 center by the time we get to tell anybody.

7 UNIDENTIFIED VOICE: Yeah. Like by 10:30
8 a.m.

9 CHAIRMAN DURHAM: Yeah, it's 10:30 a.m.
10 Let's start with Cindy Loveland. So Ms. Loveland? And
11 just a reminder, Ms. Burdsall will keep time for everyone.
12 You have three minutes.

13 MS. LOVELAND: Okay.

14 CHAIRMAN DURHAM: Thank you.

15 MS. LOVELAND: Hello. I'm Cindy Loveland. I
16 live in Jefferson County, in the 7th Congressional
17 District. I appreciate the opportunity to bring some
18 concerns to you today. I've been to a lot of Jefferson
19 County School Board meetings but this is the first time
20 I've ever come before the state Board. So I appreciate
21 that you allow this comment. The concerns that I wanna
22 bring to you today are about two Bills. One that was
23 passed in 2014 and that one was House Bill 1288, and
24 another one that's currently laid over in the house,
25 House Bill 1164.



1 House Bill 1288 that passed in 2014 requires
2 schools to make the immunization an exemption information
3 to vaccination of their enrolled students publicly
4 available on request. It also requires CDPHE in
5 consultation with other state departments to establish a
6 joint policy on the immunization data collection and
7 sharing. I haven't been able to -- to see a copy of that
8 joint policy. If there is -- if there even is one, I'm
9 not sure if there is.

10 So I'm hoping that maybe somebody could let
11 me know if there is one and where I could get a copy of
12 that. Well, the Department of Education isn't
13 specifically named. I just assume that because this is a
14 state issue, a state Bill is going to apply to every
15 single school in the state, that there would be some sort
16 of a collaboration or policy. The current Bill that is
17 laid over in the house for second reading proposes to
18 force parents who have chosen to exercise their legal
19 right to exempt or delay one or more of the vaccines
20 required for school to submit their medical, religious,
21 or personal belief exemption directly to CDPHE.

22 That record would then be put into either
23 the current immunization tracking system or in a separate
24 state-ran centralized database. Current state law
25 requires schools to collect a certificate of immunization



1 for every student enrolled, and this is the way it's been
2 done since 1979. These immunization records are
3 considered educational records and are protected by FERPA.
4 House Bill 1164 would circumvent FERPA, which would
5 require written consent before the school would share
6 that record with the state health department. Parents
7 have the expectation that their child's school records
8 are private. If CDPHE moves forward with this new online
9 system, parents need to be fully informed that they will
10 be giving up their privacy protection provided by FERPA.

11 That communication would need to come
12 through schools because that's FERPA issue and CDPHE
13 doesn't have to comply with that. Finally, I just wanna
14 say there's a lot of confusion on this issue and I think
15 it would be helpful, since it's a state issue that
16 affects every school, that maybe CDE could provide some
17 clear and accurate information on this. We're -- we're
18 already hearing from parents, that they're getting
19 letters already stating that they must file their --

20 CHAIRMAN DURHAM: Ms. Loveland, your time has
21 expired. Could you wrap it up, please.

22 MS. LOVELAND: Okay. I wanted also to just
23 give you some information about the organization that I'm
24 with. I've a copy for all of you. It's geared towards
25 legislators, but it's good for anybody that has to look



1 at policy.

2 CHAIRMAN DURHAM: Thank you very much.

3 MS. LOVELAND: Thank you.

4 CHAIRMAN DURHAM: We appreciate that.

5 Melissa Winefeldt? Thank you.

6 MS. WINEFELDT: I'll wait until she's done
7 passing this out. Thank you. Good morning. I am coming
8 to you this morning as a mother with concerns regarding
9 House Bill 1164 and even the new -- the implementation of
10 this new program through CDPHE and CDE, even if this
11 legislation does not pass. I would really like to note
12 first that everyone I've been in contact with at CDE, so
13 far, has been nothing but kind and respectful.

14 I feel the need to recognize this because
15 you're going to hear great frustration in my voice, and
16 from other parents probably, and I just want everyone
17 hear to understand, it's not directed at anyone at CDE,
18 specifically. I am a mother trying to protect my family,
19 my rights, and for months have been passed from office to
20 office. So please understand why we are so upset and
21 coming here now to you to express these concerns. I sent
22 an e-mail yesterday with concerns and asked it be
23 forwarded to Dr. Schroeder because she is my -- we're in
24 Jefferson County schools. I don't know if you were
25 forward of that --



1 UNIDENTIFIED VOICE 11: Yes.

2 MS. WINEFELDT: -- because I did not receive
3 a response. Instead I received a reply from Ms. Sara
4 Matthews that did not address one of my concerns. She
5 recommended that I contact Diana Herrera who work at
6 CDPHE. The Governor's Office of Constituent Services has
7 recommended I contact said CDPHE. The Attorney General's
8 Office has recommended I contact CDPHE. Legislators --
9 they are the sitting legislators, they -- CDPHE is the
10 problem.

11 Why would I contact CDPHE? We are not
12 getting anywhere with CDPHE. They're the ones who are
13 running out of control trying to implement a new program
14 outside of legislative authority. They are misleading
15 school districts, health and wellness coordinators,
16 school nurses, and even legislators. CDPHE has been
17 running out this information for months while the
18 legislation has currently stalled in house. There was an
19 incredible amount of confusion among school districts,
20 and child care facilities, and school nurses. CDPHE
21 claims that even if 1164 does not pass, there'll remain
22 the option for parents to go online to file their vaccine
23 exemptions, which, if I would be correct, it's only for
24 parents to file exemptions for the children. This is not
25 if you get vaccinated and you get -- you still get the



1 freedom to turn your records into -- to school every
2 fall.

3 It's only discriminating against a small
4 group of families who choose to file or have medical
5 exemptions for their children. We're gonna -- we're gonna
6 harass you, and pick you out, and treat you as a second
7 class citizenship. And we're gonna make you go directly
8 online to the state where we're gonna track your
9 children's information. And then we're gonna follow up
10 with reminder recalls. "Hey. They're your forms. Are
11 you aware of these reforms, of this incriminating
12 statement on it that says as a parent who is foregoing
13 the -- the recommendations of a physician, then I'm
14 putting my child and myself at risk by not getting him
15 vaccinated?".

16 That's compelled speech. No parent is gonna
17 sign that new exemption form. So how -- how is CDPHE
18 gonna get anybody to go online to fill out these forms
19 anyway? And do you all know that there is a separate
20 database at CDPHE? Even if you opt your child out of
21 CIIS, when you go on filing your exemption forms online,
22 your information -- this came from making various CDPHE.
23 You can double-check this information with them. All your
24 information is going to go into a separate internal
25 database to CDPHE first, and then if you choose to opt it



1 out of CIIS, she simply won't pass that information along
2 to CIIS. I don't, as a mother, I do not know where to go
3 anymore. The problem is, is that once this information is
4 taken out of schools, we lose FERPA protection. I don't
5 think the state has any business getting involved with
6 stripping me of my federal rights. I welcome any
7 questions you may have.

8 CHAIRMAN DURHAM: Thank you very much, Ms.
9 Loveland. Ms. Winefeldt. I'm sorry. Pam Long?

10 MS. LONG: Hello. My name is Pam Long and
11 I'm from Douglas County.

12 CHAIRMAN DURHAM: Please speak up a little
13 bit, if you would, Ms. Long, please.

14 MS. LONG: Can you hear me now?

15 CHAIRMAN DURHAM: A little louder, louder --

16 MS. LONG: Can you hear me now?

17 UNIDENTIFIED VOICE 12: Can you keep it in
18 the --

19 MS. LONG: I feel like I'm yelling at you.

20 UNIDENTIFIED VOICE 13: It wouldn't be the
21 first.

22 CHAIRMAN DURHAM: You won't be yelling out
23 loud. So it's okay.

24 MS. LONG: All right. One more try.

25 UNIDENTIFIED VOICE 12: There we go.



1 MS. LONG: Okay. My name is Pam Long. I'm a
2 parent from Douglas County and I have shared some of my
3 concerns of the past week with Members of the Board. I
4 also have a son with vaccine-induced brain injury. I know
5 that might come as a surprise to you, but pharmaceutical
6 products and vaccines, they do sometimes have adverse
7 effects. So I want to skip over some of the parts that
8 we've already talked about.

9 CDPHE is not being transparent with school
10 districts and school nurses. And it is acting beyond its
11 legislative authority in a way that is currently
12 directing schools to violate the FERPA House Bill 1288. A
13 2014 law directs schools to violate FERPA by uploading
14 all philosophical and religious vaccine exemptions with
15 PII to their database which is known as CIIS or C-I-I-S.
16 And since 2014, the CDPHE has not been able to resolve
17 this violation of FERPA problem discussed in all of their
18 quarterly stakeholder meetings, many of which I have
19 attended. It is technically true, if you talk to CDPHE,
20 they will tell you they are not violating FERPA because
21 that state office falls under HIPAA. However, they have
22 directed the schools to share PII, which is a direct
23 violation of FERPA.

24 And I could read you the part -- the
25 paragraph from the 2016 state audit of CDPHE that



1 directly says they aren't in violation with FERPA. Well,
2 they're directing schools to violate FERPA. But for the
3 sake of time unless you ask me to, I'll skip over that
4 and go on to my next point. Because CDPHE could not
5 resolve the FERPA violation, they proposed this Bill this
6 year to -- House Bill 16-1164 to seize control of all
7 school immunization records from schools which would then
8 lose all other FERPA protections and now fall under
9 HIPAA.

10 This Bill is not law, however, CDP is acting
11 like it is signed into law. They are sending postcards,
12 this came up in House testimony. Two families directing -
13 - in directing school nurses to post on their school
14 websites that the vaccine exemption process is changing
15 to an online-only process controlled by CDPHE in July of
16 2016. And the frustration you are going to hear from
17 parents is, "Will schools protect our rights?" ensuring
18 that school staff gives correct information, that this
19 online system is voluntary. It is not mandatory, it is
20 not current law.

21 Will CDE ensure the school staff informs
22 parents that they have the right to opt out and I will
23 finish up, thank you. Will -- will CDE explain to parents
24 that if you submit your -- your medical records directly
25 to CDPHE, you forfeit your rights under FERPA. So in



1 conclusion, the statutes are clear that each school has
2 authority over school immunization records, not CDPHE.
3 And yet both CDE offices, Data Privacy and Wellness, that
4 have been communicating with me graciously, have been led
5 to believe that they cannot challenge the directives of
6 CDPHE even when privacy is being violated and
7 misinformation is being disseminated. If you have any
8 questions, I welcome them. I have been working on this
9 issue to protect vaccine exemptions for families in
10 Colorado for 10 years.

11 CHAIRMAN DURHAM: Thank you, Ms. Long.
12 Deborah Cole.

13 MS. COLE: Mr. Chairman, Members of the
14 Board, good morning. At the end of last -- the last
15 school year, Colorado families were happy to learn that
16 the amount of standardized testing imposed under the new
17 Common Core aligned regimen would be reduced. The PARCC
18 consortium announced that the total length of assessments
19 in each grade would be decreased by 90 minutes. A careful
20 comparison between last year and this year reveals that
21 the cheering was premature.

22 If you look at the charts I've distributed,
23 you will see that the total testing time allocated for
24 third grade Math last year, for example, was 300 minutes
25 while for this year it is 240 minutes. That seems to be a



1 true reduction until you look at the small print. The
2 300-minute figure for last year was the total for time
3 and a half which is required for students with special
4 needs. Last year as it happens time and a half was made
5 available to all students, those with and without
6 required accommodations who were tested together
7 indiscriminately.

8 In practice at our elementary schools almost
9 all the students without a special needs designation
10 truly did complete these assessments in two-thirds of
11 the available time. Hence the typical average student
12 would have finished in 200 minutes. Compare 200 minutes
13 to 240 minutes, which is the total for the current year
14 minus extended time. That is the true comparison that
15 should be made. And there's something else. Both the
16 test administration manual and the PARCC website state
17 the testing window for paper and pencil testing is a
18 maximum of 30 school days. The District of Columbia for
19 example has a paper and pencil window running from 28th
20 of March to 29th of April. Maryland and New Jersey give
21 the maximum of six weeks, and Massachusetts allows
22 testing between 25th of April and 27th of May.

23 Why did CDE feel it necessary to force
24 schools opting for paper and pencil to complete all
25 testing between 11th of April and 29th of April. Once



1 again, to take third grade as an example these young
2 students are having to sit for Math tests for four
3 straight days for a total of 240 minutes and after a
4 break of a few days for another three straight days of
5 ELA testing totaling 255 minutes. They're permitted a
6 three minute break during a testing session. Special
7 needs students are being assessed for 360 minutes over
8 the first four days for Math and 283 minutes for three
9 days of ELA testing. A gratuitous and unnecessary strain
10 is being placed on our youngest students and our most
11 vulnerable students. Colorado's families should be
12 asking, "Why?" Thank you.

13 CHAIRMAN DURHAM: Thank you very much, Ms.
14 Cole. Ms. Leeds -- Ms. Leeds in the room -- L-E-D-S,
15 sorry.

16 MS. LEOS: It's Leos.

17 CHAIRMAN DURHAM: It's what?

18 UNIDENTIFIED VOICE: Leo, it's L-E-O.

19 CHAIRMAN DURHAM: Oh, it's an "O" and not a
20 "D" sorry. I will get my glasses checked.

21 MS. LEOS: It's okay.

22 CHAIRMAN DURHAM: Okay.

23 MS. LEOS: Good morning, Members of the
24 Board. My name is Blanca Leos. I'm having a bullying
25 prevention program. It is crucial for our schools. It



1 gives school staff the tools to be better at to intervene
2 and assist students when incidents of bullying occurs.
3 Bullying prevention programs create and sustain a
4 positive school culture where students feel connected to
5 their schools and also gives parents a sense of relief
6 knowing that our schools are taking the steps to prevent
7 our children from being targeted simply for being who
8 they are. It ensures that students have caring, safe and
9 respectful space for them to learn in.

10 I know for me it would have come in handy
11 when my child was getting bullied for being different. He
12 was eight -- He was in the eighth grade when -- sorry,
13 when students began to bully him at school. For him, just
14 calling him names just simply because he didn't like
15 sports, he liked girly things and acted gay. He was
16 called names and was getting picked on. This affected him
17 in many ways. He battled with depression, contemplated
18 suicide and at one point wanted to drop out. It made it
19 very difficult for his dad and I because my son has
20 always been an overachiever and a "straight A" student.

21 But when you hear your kid say, "Mom, I hate
22 school" you feel your heart tear apart. Although he told
23 several teachers about it and was telling them what was
24 going on, including the principal, it didn't prevent it
25 from happening and at one point it -- it made it very



1 difficult and worse for him. Being bullied at school made
2 it very difficult for him to learn, grow and be himself.

3 I'm here today to speak on behalf of those
4 parents who struggle with this every day and who have
5 similar experiences with their children. As parents we
6 want to feel that the school system is doing all they can
7 to keep our children safe and prevent any harm to our
8 children both physically and emotionally. If we team up
9 together, we'll have the ability to do something about --
10 about it and prevent children like mine to endure these
11 types of issues and even prevent suicide. This prevention
12 program will give parents like me the opportunity to work
13 with schools to create and implement bullying prevention
14 strategies, stay involved and help put the end to
15 bullying. Thank you so much for your time.

16 CHAIRMAN DURHAM: Thank you very much, Ms.
17 Leos. Sarah Sampayo.

18 MS. SAMPAYO: Thank you. My name is Sarah
19 Sampayo. I'm here as a parent. Although I am a school
20 Board Member, I am not speaking on behalf of our school
21 Board but rather the constituents and like-minded parents
22 who elected me.

23 I would like to speak about the use of
24 standardized testing as a venue to collect survey type
25 data on our children. The matter of standardized testing



1 has evolved from an interest in permitting education to
2 an interest in promoting political agendas. When one has
3 knowledge of the history of how standardized testing has
4 been evolving, it is apparent.

5 Mandatory participation in standardized
6 state required testing should not be used as a license to
7 a data pool population without the informed consent and
8 knowledge of the parents as to what they're collecting
9 and the use of it. Last year, there were numerous reports
10 of questions on standardized tests that required a
11 student to access their personal political values or
12 religious or family beliefs in order to answer the
13 questions. I argue that such questions are inappropriate,
14 number one, because they were forbidden by the then
15 current federal law; and number two, because who
16 determines the right answer.

17 This begs the question of why are such
18 questions on this test. The State has no right to be
19 measuring our children according to these religious,
20 family or political beliefs. I am now hearing reports of
21 pretest survey data that accompanies the standardized
22 tests. We as parents should have the right to be informed
23 and refuse participation in such survey type information
24 gathering. Currently, only on the minor -- only the minor
25 children are being informed and instructed. I would



1 respectfully ask that the State Board implement an
2 instruction that the test proctors administering the
3 tests should be instructing children that they are not
4 required to answer questions that ask them to reveal
5 their personal attitudes, values or beliefs.

6 I respectfully request that we ensure by way
7 of policy that our schools recognize and respect the
8 primacy of the rights of the parents in the parent-child
9 relationship especially regarding the privacy and the
10 role of the parent in the matter of attitudes, values and
11 beliefs, and that survey type questions be required to
12 have the informed consent of the parents before the kids
13 are invited to participate. Thank you.

14 CHAIRMAN DURHAM: Thank you very much, Ms.
15 Sampayo. Ray Trout.

16 MR. TROUT: My name is Ray Trout. I was not
17 prepared to say anything so I will try to be brief.

18 UNIDENTIFIED VOICE: Excuse me, we are not
19 able to hear him very well, so --

20 CHAIRMAN DURHAM: Speak up, speak up just a
21 little if you would.

22 MR. TROUT: Yes. Once an engineer, but I
23 have been working this past year in the process of light
24 assessment that I hope can take the place of serious
25 overtesting. I was at the meeting yesterday at the



1 capitol on the privacy issue. I think that was good. But
2 I think the default in the personal information should be
3 that the personal information does not leave the school,
4 that should be the default.

5 This kid came and installed it on my
6 computer the other night without my permission or desire,
7 it took me half an hour to block all of the ways that a
8 youngster might grab as the easy default, an open window
9 to an endless number of vendors being able to pull
10 whatever they wished from my computer, and surely, the
11 computers of young people.

12 I think that's a -- that's the wrong way to
13 structure a default. The firewalls in the legislation as
14 far as I can tell has to do with contract language, the
15 possibility of maybe a curtailment of a contract, the
16 language should be discussing a serious prison time for
17 violations in my opinion. That should be the default, not
18 potential cancellation of some business. The way it's set
19 up as far as I can tell, I'm not an expert but it seems
20 like it's going to pitch mothers against a very large
21 powerful industry; and that's not the default it needs to
22 be, turned a bit upside down. That's as much as I can say
23 right now. Thank you very much.

24 CHAIRMAN DURHAM: Thank you, Mr. Trout. I
25 thank those who participated. Sticking to the time, I'm



1 just going to exercise a little discretion here. The --
2 by way of disclosure, the 1979 amendment on the personal
3 exemption, if my memory serves me correctly, is one that
4 I carried as a Member of the Legislature and put into the
5 lawsuits. I've a little stronger feeling in favor of
6 personal exemptions than perhaps most. And I would ask
7 Mr. Dill to review whether or not school districts are
8 obligated without additional statutory change to comply
9 with requests, these requests from CDH -- C -- C --
10 Colorado Department of Health and if they are not to
11 propose a notice that we might send to them reminding
12 them of their obligations under the law to keep that
13 private.

14 So -- and I'm sure that will be
15 controversial within your own department, Mr Dill, and I
16 presume you will exercise appropriate fiduciary duty for
17 us. So I think that -- I think that the department should
18 not be assisting nor should school districts be assisting
19 unless they're compelled by State Law to do so. And if
20 they're, that's -- then that -- I hate to suggest that
21 the parents need to go someplace else, but it is more
22 appropriately taken across the street than here
23 unfortunately. Also, I do -- the -- the -- the PARCC
24 exams, could -- can we have these time frames reviewed
25 and -- and the survey question issues especially, have



1 that reviewed. I would appreciate it.

2 MS. MAZANEC: Excuse me.

3 CHAIRMAN DURHAM: Yes, Ms. Mazanec.

4 MS. MAZANEC: Ms. Sampayo is here. Didn't we
5 have this issue discussed last year that there was a
6 survey at the end of -- is that the same thing you're
7 talking about.

8 MS. SAMPAYO: That was before and this is
9 after.

10 MS. MAZANEC: This is different. Okay. We'll
11 talk to you afterwards to get more details.

12 CHAIRMAN DURHAM: I think we need -- we need
13 your help in those discussions of -- I mean not -- not
14 here, but those were discussed last year, Ms. Mazanec and
15 I think there was a general denial that that took place
16 but who knows --

17 MS. MAZANEC: Well, it was up to districts.

18 CHAIRMAN DURHAM: So. All right. Yeah.
19 Thank you. Why don't we take a five minute recess and
20 then we'll start with the item nine. Okay. Five minutes,
21 try and keep it five minutes if we can. Thank you.

22 (Meeting adjourned)

23

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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