



Colorado State Board of Education

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COLORADO DEPARTMENT OF EDUCATION COMMISSION
DENVER, COLORADO
February 18, 2015, Part 1

BE IT REMEMBERED THAT on February 18, 2015,
the above-entitled meeting was conducted at the Colorado
Department of Education, before the following Board
Members:

Marcia Neal (R), Chairman
Angelika Schroeder (D), Vice Chairman
Valentina (Val) Flores (D)
Jane Goff (D)
Pam Mazanec (R)
Steve Durham (R)
Debora Scheffel (R)



1 MADAM CHAIR: Hi, good morning, ladies and
2 gentleman, this is Vice Chair Angelika Schroeder speaking.
3 Our Chair is coming to us this morning on the telephone.
4 Good morning, Marcia, good morning ladies and gentleman,
5 and folks listening to us.

6 MS. NEAL: Good morning, Board members.

7 UNIDENTIFIED VOICE: Good morning, Marcia.

8 MADAM CHAIR: Do you want to share thoughts
9 or not, Marcia?

10 MS. NEAL: My thoughts right now are not
11 worth sharing.

12 MADAM CHAIR: Okay. Well --

13 MS. NEAL: I probably will have to leave at
14 10:00 because I've got something -- I will let you know,
15 but I should be able to be here till at least 10:00, okay?

16 MADAM CHAIR: That's great. And we wish you
17 speedy recovery.

18 MS. NEAL: Thank you.

19 MADAM CHAIR: I'd like to note that we have
20 a new arrangement on the State Board. We have historically
21 had a custom that State Board members sit Republican,
22 Democrat, Republican, Democrat. So our Chair has chosen
23 this arrangement, and hope that's okay with everyone.
24 Staff, would you be kind enough to call the roll?

25 MS. BURDSALL: Steve Durham?



1 MR. DURHAM: Present.

2 MS. BURDSALL: Dr. Flores?

3 MS. FLORES: Here.

4 MS. BURDSALL: Jane Goff?

5 MS. GOFF: Here.

6 MS. BURDSALL: Pam Mazanec?

7 MS. MAZANEC: Here.

8 MS. BURDSALL: Marcia Neal?

9 MS. NEAL: Phone.

10 MS. BURDSALL: Dr. Scheffel?

11 MS. SCHEFFEL: Yeah, here.

12 MS. BURDSALL: Dr. Schroeder?

13 MADAM CHAIR: Here. Next is to pledge the

14 Pledge of Allegiance. Bizy, would you be kind enough to

15 lead us?

16 ALL: I pledge allegiance to the Flag of the

17 United States of America and to the Republic for which it

18 stands. One Nation under God, indivisible, with liberty

19 and justice for all.

20 MADAM CHAIR: Thank you. Thank you, is

21 there a motion to adopt the agenda? To approve the agenda?

22 So moved. Any seconds?

23 UNIDENTIFIED VOICE: I second.

24 MADAM CHAIR: Any discussion? Steve?

25 MR. DURHAM: Thank you. Thank you. I would



1 just like to make an inquiry of the Chair. When you leave
2 at 10:00, Marcia, how long will you be gone?

3 MS. NEAL: I don't know, Steve, good
4 question. I do know that I will not be able to vote in the
5 Charter School Appeal, and I'm very sorry about that. But
6 if I don't hear the whole thing, I can't vote on it, is
7 what I've been told. So I will let you know when I leave,
8 but -- and then we can talk about that. You know, because
9 I will not necessarily be gone for very long, but there is
10 a troop of doctors coming in to talk to me, and I do mean
11 "troop." So anyway, I will let you know, but I can't give
12 you a definitive answer to that. We'll just have to
13 proceed and see how it -- as we move along, okay?

14 MR. DURHAM: I feel your pain. I spent
15 Thursday night in the Emergency Room myself, so --

16 MS. NEAL: Really?

17 MR. DURHAM: Oh yeah, great sport.

18 MADAM CHAIR: This is contagious on the
19 Board.

20 MR. DURHAM: Apparently it is. I think
21 under the circumstances, I would move to severe the
22 approval of the agenda and remove the items relative to the
23 Charter School Appeals until a later date. So I will make
24 that motion initially to remove those two agenda items.

25 UNIDENTIFIED VOICE: I second.



1 MS. NEAL: (Inaudible)? Can you do that to
2 (inaudible) there is a real legal position back there? Are
3 you able to do that?

4 MADAM CHAIR: With regard -- I -- I -- Madam
5 Chair, yes it's -- I believe so. I think that one of the
6 things that -- with regard to the motion to dismiss, there
7 is not a statutory deadline on that.

8 MS. NEAL: Okay.

9 MADAM CHAIR: With regard to the Launch High
10 School, which is Item 10 --

11 UNIDENTIFIED VOICE: There is a 60 day
12 deadline.

13 MADAM CHAIR: There is a 60 day deadline,
14 and if -- if the Board Chair would like to hear from
15 Attorney Brad Miller, who is present, he would like to
16 address the Board if --

17 MS. NEAL: Okay, fine.

18 MR. MILLER: Good morning, Dr. Schroeder,
19 and Board. On behalf of Launch Academy, if it's the case
20 that you'll have a member missing, Launch Academy would be
21 more than willing to waive the deadlines.

22 MR. DURHAM: Okay, so I will renew then my
23 motion to sever those two items -- that's Items 10 and --
24 what's the other one?

25 MADAM CHAIR: 19.02.



1 MR. DURHAM: 10 and 19.02 from the agenda.

2 UNIDENTIFIED VOICE: I second.

3 MADAM CHAIR: Deb?

4 MS. SCHEFFEL: And shall we look at Item 8?

5 I mean, again, if we have someone who is not able to vote?

6 Which is the accountability and performance that support

7 the function of the agenda?

8 MS. NEAL: Well, I'm hoping that maybe we'll

9 be -- you know, if you take an early vote, I may be here

10 for that one. And thank you, Steve, for that other motion,

11 I appreciate that.

12 MR. DURHAM: Okay.

13 MS. SCHEFFEL: But we don't know if Marcia

14 will be here for Item 8; we sever that as well? Or is that

15 a separate motion?

16 MADAM CHAIR: That will be a separate

17 motion, yes. So I think we first need to vote on the first

18 motion. You want to call the roll, please?

19 MS. BURDSALL: Steve Durham?

20 MR. DURHAM: Aye.

21 MS. BURDSALL: Dr. Flores?

22 MS. FLORES: Aye.

23 MS. BURDSALL: Jane Goff?

24 MS. GOFF: Aye.

25 MS. BURDSALL: Pam Mazanec?



1 MS. MAZANEC: Aye.

2 MS. BURDSALL: Marcia Neal?

3 MS. NEAL: Aye.

4 MS. BURDSALL: Dr. Scheffel?

5 DR. SCHEFFEL: Yes.

6 MS. BURDSALL: Dr. Schroeder?

7 MADAM CHAIR: Yes. Go ahead, Deb, if you
8 want to make another motion?

9 MS. NEAL: Could I say something before you
10 do that? Steve, I think we should go head with the
11 Commissioner's report and everything. If it comes -- if
12 I'm not here when it comes to the point of whether the
13 waiver requests will be carried forward, then of course we
14 can make -- I think you can make a decision at that time, I
15 believe.

16 MADAM CHAIR: Okay.

17 UNIDENTIFIED VOICE: Okay.

18 MADAM CHAIR: Is that okay? I think it was
19 Deb --

20 MS. SCHEFFEL: Is that possible? I mean,
21 can we do that? Or do we --

22 UNIDENTIFIED VOICE: She just said we could.

23 MADAM CHAIR: Yes.

24 MS. SCHEFFEL: Okay, thank you.

25 UNIDENTIFIED VOICE: I think the Attorney



1 General's Office representatives are here, and I think it's
2 the first item, really, so --

3 MADAM CHAIR: So we'll need to approve the
4 amended agenda, I believe?

5 UNIDENTIFIED VOICE: Yes, yes.

6 MADAM CHAIR: Any -- any opposition to the
7 amended agenda? We don't need to call (inaudible). Good.
8 Moving on to the consent agenda, do I have a motion to
9 place items on the consent agenda?

10 MR. DURHAM: If I had a copy handy, I could
11 maybe --

12 MADAM CHAIR: One moment, please. Here it
13 is.

14 MR. DURHAM: Okay, let's see. (Inaudible)

15 (Pause)

16 MADAM CHAIR: Do I have a motion, anyone?

17 MS. NEAL: Don't you usually get somebody to
18 read it for you?

19 MADAM CHAIR: It's being read. It's being
20 read, thank you.

21 MR. DURHAM: Thank you.

22 UNIDENTIFIED VOICE: (Inaudible).

23 MR. DURHAM: I just thought I might read it
24 to myself.

25 MADAM CHAIR: Sure.



1 MR. DURHAM: In advance.

2 MADAM CHAIR: Sure.

3 MS. NEAL: You have to talk really fast.

4 MR. DURHAM: That's usual for me. I'm more
5 likely to talk in great length.

6 UNIDENTIFIED VOICE: Do you want me to read
7 it instead, Steve?

8 MR. DURHAM: No, I'll be happy to read it.
9 Let's see. I move to place the following items on the
10 consent agenda: Approve the recommended school turnaround,
11 leaders development program, grant recipients and awards
12 amounts as set forth in the published agenda.

13 Regarding disciplinary proceedings
14 concerning a license charge number 201-4EC1, direct
15 department and staff and State Attorney General's Office,
16 to prepare the documents necessary to request a formal
17 hearing for the revocation of the license holder's
18 professional teachers license pursuant to 24-4-104 CRS.

19 Approve six initial emergency authorizations
20 as set forth in the published agenda.

21 Approve Adams County 14's individual
22 alternative principal preparation program for Sheila Burke
23 -- Shyla (ph) Burke, as set forth in the published agenda.
24 Approve the University of Northern Colorado's request to
25 offer a dance education endorsement program as set forth in



1 the published agenda.

2 Approve the University of Colorado at
3 Colorado Springs request for authorization of its teacher
4 preparation program, as set forward in the published
5 agenda.

6 Approve the University of Colorado at
7 Denver's request for authorization of its district-based
8 Denver Public Schools endorsement in cultural and in
9 linguistic (inaudible) diverse education, as set forth in
10 the published agenda.

11 Approve Fort Lewis College request for
12 authorization for culturally and linguistically diverse
13 bilingual education endorsement, as set forth in the
14 public's agenda.

15 Certified payments to school districts for
16 the Public School Finance Act of 1994 as amended. State
17 Sheriff total program for January and February 2015 in the
18 monthly amounts of \$329,233,608.71.

19 Affirm Denver Public Schools designation as
20 a District of Innovation, and approve its request for
21 waiver from the state statute on behalf of High Tech
22 Elementary School, as set forth in the published agenda.

23 Approve Janet Denans (ph) -- approve Janet
24 Denan (ph) to serve on the Education Data Advisory
25 Committee as a representative with charter school



1 experience, as set forth in the published agenda." I think
2 that's it.

3 MADAM CHAIR: Thank you, that's a proper
4 motion. Is there a second?

5 UNIDENTIFIED VOICE: Second.

6 MADAM CHAIR: So any discussion? All in
7 favor? Yes? Thank you. The next item is a report from
8 Ms. Markle.

9 MS. MARKLE: Good morning members of the
10 Board, and Mr. Commissioner. Just briefly, you have quite
11 a number of items in your packets this month. You have
12 your updated expense report, the updated events calendar,
13 you have in Item 8, a copy of the formal Attorney General
14 opinion, and copies of waivers received.

15 In addition, on the dais, you received
16 waivers that came in since we prepared your packets,
17 including a waiver request that came in this morning. And
18 Item 12.01, you have supporting materials for the
19 discussion around mathematic standards. You have a Power
20 Point and related material there.

21 In 13.01, you have the supporting materials
22 for the discussion around the Elementary and Secondary
23 Education Act flexibility waiver renewal -- it's a Power
24 Point.

25 In 14.01, you have the proposed read ACT



1 rule revisions Power Point, along with the (inaudible) with
2 proposed rules, and a copy of the Attorney General's
3 opinion with regard to those rules.

4 In 15.01, you have a copy of the rules for
5 the administration of the Colorado School Awards Program,
6 and revised rules reflected changes that have been made
7 since the notice of rulemaking.

8 In 16.01, you have the chart showing the
9 program grant recommendations for the School Turnaround
10 Leaders Development program.

11 In 18.01, you have the School Finance Rate
12 Equalization Accounting Report for January of 2015.

13 In 18.02, you have a proposed resolution
14 from the Public School Construction Assistance Board, which
15 will be before you for consideration later today.

16 And 19.01, you have the supporting
17 materials for the Innovation Plan submitted by the Denver
18 Discovery School.

19 You have a copy of the CV of Janet Denan
20 (ph) in 20.01, as the new member of EDAC, the Education
21 Data Advisory Committee. For tomorrow, you have a number
22 of items. You have copies of Senate Bill 173, and House
23 Bill 12.01 for your legislative update.

24 You have, in Section 401, a number of items
25 for the graduation guidelines discussion. You have a Power



1 Point, a document entitled Guidelines Toolkit, a
2 publication entitled Cracking the Code: Synchronizing
3 Policy and Practice for Performance-Based Learning.

4 You have ACT data, and an assessment
5 workgroup members list, and some sample graduation
6 requirements. In section 501 for tomorrow's -- you have a
7 copy of the Attorney General opinion on the analysis for
8 withdrawing from the Common Core, along with a department
9 fact sheet.

10 In 5.02, you have a proposed resolution in
11 support of social studies.

12 In 5.03, you have a copy of the CMAS
13 setting top scores for science and social studies for high
14 school, along with high school science performance level
15 descriptors.

16 In 6.01, you have a proposed resolution
17 concerning parental rights, and finally in 7.01, you have
18 participation rate requirements for federal and state
19 obligations Power Point, and a supplemental document
20 setting for a statute and rule for that discussion
21 tomorrow.

22 And that's the end of my report, unless
23 there are questions from the members of the Board.

24 MADAM CHAIR: Any questions? So we have an
25 incredibly packed agenda. We are already almost a half an



1 hour late, according to these estimated times. So I would
2 like to turn this over to the Commissioner, to talk about
3 the -- regarding the waiver request from performance-based
4 component of CMAS.

5 MR. HAMMOND: Great. Thank you, Madam
6 Chair. As you know, at the January Board of Education
7 meeting, the Board voted to direct me, as the Commissioner
8 of Education, to grant waivers to the performance based
9 portion of the CMAS test to districts who requested those
10 waivers. And as of today, we have 19 districts and we had
11 just one come in, which your sheet, you should have before
12 you, will be updated. But with 19 districts, I have 178.

13 We also -- that will involve a student count
14 of approximately 119,774 students that could be affected
15 with the way waiver is approved, and that amounts to about
16 20 -- of over 20 percent of the student population of the
17 state. Because of the earlier advice that was received
18 from the Attorney General's Office that I pointed out
19 concerning waiving state mandated assessments, I requested
20 that the Attorney General's Office revisit this issue, and
21 as a result, they decided to issue a formal opinion.

22 On February the 10th -- thank you very much -
23 - on February the 10th, I receive that formal opinion, as
24 well as each of you, that was made public, concerning the
25 Board's authority to waive state mandated assessments. We



1 have representatives here today from the Attorney General's
2 Office, and I suspect people are here from the audience as
3 well. So with that, I would like to go over to the
4 (inaudible) Office.

5 MR. DYL: Good morning.

6 MADAM CHAIR: Would you be good enough to
7 introduce yourself also, please. For those listening.

8 MR. DYL: Okay. My name is Tony Dill,
9 Senior Assistant Attorney General from the Colorado
10 Attorney General's Office, and with me --

11 MS. MERZ-HUTCHINSON: Good morning, my name
12 is Michelle Merz-Hutchinson; I'm the First Assistant
13 Attorney General in charge of the Education Unit from the
14 Colorado Attorney General's office.

15 MR. DYL: I presume that for the most part
16 we'll be taking questions. You've all had an opportunity
17 to review the opinion. Just a brief encapsulation: The
18 opinion identifies three grounds of -- regarding the
19 authority of the State Board of Education to grant waivers
20 for the first portion of the English language arts, and
21 math test.

22 The first ground is that the Board of
23 Education's authority to grant waivers from state statutes
24 and regulations is itself statutory. And the statute that
25 empowers the Board to grant waivers in certain situations



1 specifically prohibits waiving the statewide assessment
2 through testing requirements in 22-7-409, which is where
3 statutory mandate for this particular assessment is
4 located.

5 The other reasons identified were that the
6 motion attempted to draw a distinction between the two
7 components of the English language arts and math
8 assessment, and to allow waiver of the first component.
9 However, the office concluded after reviewing the law, that
10 the State Board of Education cannot direct how the
11 Department administers these assessments; that's
12 statutorily committed to the discretion of the Department.
13 And also, that as a member of the PARCC Consortium, we are
14 bound by the PARCC by-laws which indicate that the
15 assessments have to be administered as they were designed
16 by PARCC, in order to be effective.

17 The final reason was that not administrating
18 the first component of the English language arts and math
19 assessment would violate both state law and federal law.
20 And the state law again is 22-7-409, indicating that every
21 public school student shall take the assessments, and that
22 federal law also requires the state -- the uniform state-
23 wide assessments, and a failure to do so could jeopardize
24 federal funds under Title 1. In addition, the opinion goes
25 on to note that if the assessments are not given, those



1 individual districts not giving them, might find that some
2 of their federal programs become problematic, because
3 various federal programs are tied to the assessment results
4 themselves. And so the individual school districts could
5 find themselves putting federal money for certain programs
6 in jeopardy. Are there any questions?

7 MADAM CHAIR: Steve?

8 MR. DURHAM: First, the fact that local
9 funding might be -- might be endangered or at least
10 theoretically endangered, that's not a concern of the
11 Board, but that is a concern of the local district that
12 applied for the waiver, and apparently if they know -- and
13 I presume that they're all well represented by counsel,
14 that they know that that's a possibility, that's a risk
15 they assume, and apparently willingly assume in the
16 prospect of requesting the waiver. Correct, or not
17 correct?

18 MR. DYL: I really don't have any knowledge
19 about what advice the local districts are receiving. All I
20 know is that they would be putting this in jeopardy. I
21 have heard anecdotally that some people do not believe that
22 is the case, but --

23 MR. DURHAM: It's a risk they assume.

24 MR. DYL: It's a risk.

25 MR. DURHAM: It's not our problem one way or



1 the other if it's a risk they are willing to assume.

2 MR. DYLAN: Let's divide this up, because
3 we're talking about two separate things.

4 MR. DURHAM: I'm not, I'm talking about
5 those funds that go to the district. I'm talking about the
6 latter.

7 MR. DYLAN: Okay. There are funds that go to
8 the district through the state; generally Title 1 funds.
9 And those are regarded as state funds. In other words,
10 those funds could be withheld from all the districts in the
11 state, should the state, at the state level decline to
12 enforce the assessments. So there's that pot of money.
13 Then we're talking about separate pots of money for other
14 separate programs that school districts may participate in,
15 but which are tied again to the assessment results. So
16 there is two separate ways that federal funds could
17 potentially be imperiled in this situation.

18 MR. DURHAM: Well, I will try one more time:
19 It's a yes or no question. Those funds that go to the
20 districts, and only those districts that elect not to
21 proceed, have those funds jeopardized, that is their
22 decision, not ours. Yes or no?

23 MR. DYLAN: Well, I don't -- I don't believe
24 that is accurate. I'm sorry. There's a possibility here,
25 given the way federal funds are organized, that the



1 decisions of some districts to not do this assessment, will
2 imperil the federal funding for the state as a whole.

3 MADAM CHAIR: Commissioner?

4 MR. HAMMOND: If I may, Madam Chair, Mr.
5 Durham?

6 MR. DURHAM: Yes.

7 MR. HAMMOND: The answer to your question is
8 "No", okay? Districts would -- knowingly, or not, it
9 varies, their funds could be affected. That I believe.
10 Also, from everything we've talked to the federal
11 government, our funds would be in jeopardy, and it could
12 affect all districts. Thank you.

13 UNIDENTIFIED VOICE: May I ask a question?

14 MS. METZ-HUTCHINSON: Yes, sorry.

15 UNIDENTIFIED VOICE: What about when parents
16 decide -- not the district -- but the parents decide that
17 they will not allow the -- their children to take the test?
18 And what if more than 95 percent of these parents decide
19 that they will not take the test? Now, they have the
20 right. This is not anything with the district. This is
21 something --

22 MS. METZ-HUTCHINSON: You are asking a
23 question? Or are you giving an answer?

24 UNIDENTIFIED VOICE: Yes, I'm asking a
25 question. So what happens to the district if, you know,



1 without the district's consent, local parents from that
2 jurisdiction, from that district -- let's say 50 percent
3 decide not to have their children take that test? What
4 would happen?

5 MS. NEAL: Excuse me, Angelika?

6 MADAM CHAIR: Yes, Marcia?

7 MS. NEAL: My doctor's conference is coming
8 up here, and so I'm going to be gone for a while. I just
9 wanted to let you know that from this point -- I will let
10 you know when I can come back, okay?

11 MADAM CHAIR: That's great. Good luck.

12 MS. NEAL: All right, thank you.

13 UNIDENTIFIED VOICE: Good luck, Marcia.

14 MR. DYL: Okay, there's two potential things
15 that could happen to a district under those circumstances,
16 and that's -- to put them in two separate buckets, there's
17 the state law bucket, and the federal law bucket. As
18 background, as I'm sure you're aware, federal law has a 95
19 percent participation rate component to it. As part of our
20 NCLB waiver, we've agreed to enforce that 95 percent
21 through our accreditation system by saying that a district
22 that does not meet the 95 percent threshold could see its
23 accreditation rating lowered by one -- by one level.

24 On the federal level, there is the potential
25 there that a range of actions could be taken, and it's very



1 difficult to say what range of actions under these
2 circumstances would be taken, but I have seen three letters
3 issued to various states, including Colorado, from the U.S.
4 Department of Education, describing those range of actions.
5 They begin with, you know, essentially warnings, compliance
6 plans, some sort of cease and desist order, removing
7 administrative funds, or removing programmatic funds. So
8 there's really a sliding scale. I would speculate that if
9 a district did not reach the 95 percent threshold through
10 no fault of its own --

11 UNIDENTIFIED VOICE: That's right.

12 MR. DYL: -- that you would be looking at
13 lesser sanction or intervention than if a district did not
14 meet it because they just decided not to -- not to offer
15 the test at all. However, ultimately, the sanction faced
16 would be up to U.S. Department of Education.

17 MADAM CHAIR: Any other questions? I
18 understand that there are members of the public present,
19 wishing to provide testimony. So before the Board takes
20 action, I'd like to have open floor to public comment for
21 no more than 30 minutes, to allow members of the public to
22 address us. If you -- wishing -- members of the public
23 wishing to address the Board will each have three minutes
24 in which to speak. Are there members here, please? Did we
25 have a list outside? Or not?



1 UNIDENTIFIED VOICE: Angelika?

2 MADAM CHAIR: Yes?

3 UNIDENTIFIED VOICE: Can I ask one question?

4 MADAM CHAIR: Certainly, sure.

5 UNIDENTIFIED VOICE: So you are telling us
6 that it can't be done. Is there any way these waivers
7 could be modified so that they could work? Can the
8 districts do anything to make it possible?

9 MR. DYL: No. Short answer -- no. There is
10 -- I mean, there is -- certainly there is a possibility of
11 modifying state law, regarding -- regarding the waivers,
12 but that would be something that would have to be, you
13 know, originated in legislature. There's also, you know,
14 in terms of the federal requirements, and I believe we
15 might have a chance to talk about that later -- later today
16 or tomorrow. You know, the NCLB waiver is -- up for
17 renegotiation, and so it is certainly possibly to try to
18 achieve some additional flexibility there, in terms of what
19 the state can and cannot do.

20 MADAM CHAIR: Deb?

21 MS. SCHEFFEL: When is the NCLB waiver up
22 for reconsideration?

23 MR. DYL: I believe that it's in March.

24 UNIDENTIFIED VOICE: Next month, yep.

25 MR. BILL: That it has to be submitted in



1 March.

2 MR. DURHAM: We'll be discussing that today,
3 and then it will be up for your approval of audit at the
4 next board meeting.

5 MS. SCHEFFEL: Thank you.

6 MADAM CHAIR: Any other questions, Board
7 Members? My apologies, I thought we were finished.
8 Please, proceed.

9 MR. SANDERS: Good morning. My name is Rob
10 Sanders, and I am the Superintendent of Schools in Marino.
11 A very small school district, just south and west of
12 Sterling. We have about 315 students, and historically,
13 we've actually performed fairly well on state assessment.

14 First of all, I'd like to thank you, the
15 Board and Commissioner Hammond, for allowing me this
16 opportunity to speak to you this morning. Secondly, I'd
17 like to applaud the effort of the Board for signing a
18 resolution to try to halt what's going on with PARCC at
19 CMAS right now. We filed the waiver with full knowledge
20 that there was a very high likelihood it was going to be
21 denied. We knew that. We felt like it was symbolic in
22 nature. We felt like we could not stand idly by as we
23 watch what's going to happen to our students this spring.
24 We tested 17 seniors this spring on CMAS; we shut down our
25 library for seven days, for 18 kids. We are about to test



1 270 students.

2 The decision to get into the PARCC
3 Consortium is one in a long line of decisions that are made
4 in Denver, and sometimes have negative impacts for smaller
5 school districts. As we get into testing season, which we
6 don't call "spring" anymore, we believe we're going to be
7 limiting access and learning opportunities for our
8 students. In Marino, we are like a lot of many rural
9 school districts. Our computer labs are in our libraries.
10 We will be shutting down our libraries and computer labs
11 for two and a half months. Our Spanish class, which is
12 currently taught through the computer lab, we won't have.
13 We don't have the computers to make it happen.

14 Again, I applaud your efforts. We know that
15 it's a high likelihood to be turned down, but you really
16 have to question what's happening in our state right now,
17 when I know of one superintendent who has already opted
18 their child out of the testing, and I know several more
19 than are planning to do the same. Thank you.

20 MADAM CHAIR: Thank you. One moment please.

21 (Pause)

22 MADAM CHAIR: Marcia, are you back? Hello?

23 MS. NEAL: Hi, Bizy?

24 MS. BURDSALL: Yes.

25 MADAM CHAIR: Great.



1 MS. NEAL: I'm back.

2 MADAM CHAIR: Great. We'll proceed.

3 MS. NEAL: Okay?

4 MADAM CHAIR: Any others wanting to speak to
5 this particular issue? The waivers?

6 MS. NEAL: All right. Any -- oh, are you
7 through speaking about the waivers?

8 MADAM CHAIR: We've only had one speaker,
9 Marcia. And we'll proceed. Any further discussion by the
10 Board?

11 MS. NEAL: Well, I had a question and I
12 don't know if you solved it when I went away. When we
13 talked about the parents, isn't that a separate issue?

14 MADAM CHAIR: Yes, it is.

15 UNIDENTIFIED VOICE: Yes, it is.

16 MADAM CHAIR: I think that's how it was
17 described. Oh --

18 MS. NEAL: That's how you worked it out.
19 Okay, thank you.

20 MADAM CHAIR: So is the Board ready to --
21 Steve?

22 MR. DURHAM: Well, I have a couple of
23 generic comments, and then I think I'll probably have a
24 motion. The -- you know, you -- had the fortune last night
25 to spend some time with some educators and employees of



1 state Departments of Education from other states and listen
2 to some of the things they were doing, and the way they
3 were moving education forward.

4 And somehow in Colorado, we seem to have
5 gotten bogged down in a -- in a regimen of testing that
6 appears at least to small districts -- and I suspect many
7 of the large school districts -- to be overly burdensome.
8 We have clearly become part of a shrinking PARCC Consortium
9 that I understand is now down to ten states, and I don't
10 know exactly how that affects originally cost. Twelve
11 states. How that affects the original cost estimates, but
12 obviously they are not going down as a result of having a
13 smaller base to spread the cost to.

14 That we have ignored and been unable to deal
15 with the issues that surround the test based on privacy,
16 and other concerns about how the data is used, and by whom,
17 and what is collected. And you would think that we could
18 get a couple, three sentence paragraphs to describe what we
19 collect, that we agree not to collect more than that, and
20 that we agree to ensure that the contractors don't collect
21 more than that. But we can't seem to even get that far.

22 And so, I think the reason for parental
23 concern, not just on the question of validity of the test,
24 and I would say that having the opportunity to take those
25 tests -- or not take them, but to read them -- I only got



1 to spend an hour, so I have plenty more time to spend on
2 them, I think raises serious questions, certainly in my
3 mind, about what they were testing, and the validity of
4 what they were testing, relative to results.

5 We've had -- we've had an attorney general
6 that has, until very recently, I think not recognized that
7 there are significant numbers of people, that this Board
8 has voted against this testing before I was a member of it.
9 But precious little has been done to lay out a road map,
10 propose legislation, provide legislation to this board for
11 an opportunity to make the modifications necessary to make
12 -- to make real changes, and to see if we could return the
13 state to -- to -- so we can actually get back to focus on
14 education, as opposed to these peripheral issues, but we
15 can't seem to quite get there.

16 And -- and I think perhaps to me, the one
17 that -- that bothers me the most is the complaints I've
18 received from parents, which have been documented, that the
19 kinds of pressures that districts are applying to students
20 to take these tests, presumably to achieve the 95 percent
21 factor, including one of which I'm personally acquainted,
22 where the principal told the parent that if they elected
23 not to test, the child could not attend school for at least
24 30 days. It seemed to me that the idea was to have
25 children in school, and educate them, but apparently not if



1 that gets in the way of achieving 95 percent.

2 So I recognize the difficult position that
3 we're in with the Attorney General's opinion, and let me
4 say that while I respect the Attorney General's opinion, I
5 don't happen to agree with it. And I don't think an
6 adequate attempt has been made to look at all of the
7 options that are available. But none the less, the opinion
8 is what it is. So I think the best thing -- I think the
9 Board should do two things today that I would recommend and
10 actually incorporate into a motion: One would be that we
11 leave the application for waivers open in the hopes that
12 the General Assembly will clarify the authority of the
13 Board to deal with these waivers.

14 And so that we actually take no action on
15 the ones that are pending, and continue to accept
16 additional applications. And two, that we remove penalties
17 that the districts face for failing to meet the 95 percent
18 threshold, so that the pressure on parents, hopefully, will
19 be eliminated, and that they can make rational choices
20 concerning the best interests of their child as the parents
21 see it.

22 So it is -- it is a motion that delays the
23 waiver issue, but removes the authority of the Commissioner
24 to penalize school districts for failure to -- for failure
25 to meet the 95 percent threshold, and I think when we get



1 down to the consideration of waiver requests and other
2 things we are doing at the Federal Government, the Board
3 probably needs to have some fairly significant input on
4 exactly how we approach that problem, and the kind of
5 effort that we make -- make with the U.S. Department of
6 Education. So I'll make that as a substitute motion to
7 granting the waivers.

8 MADAM CHAIR: Could you repeat the motion?

9 MR. DURHAM: The motion would be that we
10 table until the next meeting, either regular or special
11 meeting of the Board. We table the request for what -- we
12 table the consideration of the granting of the waivers.
13 And two, that we immediately remove any penalties imposed
14 on school districts for failure to meet the 95 percent
15 threshold of participation.

16 MADAM CHAIR: Is there a second? Deb.
17 Discussion?

18 MR. HAMMOND: Madam Chair.

19 MADAM CHAIR: Mr. Commissioner?

20 MR. HAMMOND: He made a clarifying point.
21 Two things, okay? The first thing is to request that you -
22 - if I understood it correctly, that the 95 percent would
23 not be applicable, which would follow your motion, correct?

24 MR. DURHAM: That would not be --

25 MR. HAMMOND: That couldn't be enforceable.



1 MR. DURHAM: That -- that is correct. In
2 terms of the penalty applied, in terms of ground --
3 downgrading the accreditation rating of the school, which
4 is I think, the penalty that you apparently would apply to
5 districts that failed to meet the 95 percent.

6 MR. HAMMOND: Okay. Here is the issue with
7 that. If you will allow me to talk about that. There is
8 two issues around that, but they are both tied together.
9 The first issue is: One, our own accreditation rating that
10 if you don't make the 95 percent, you drop -- you drop a
11 category, if it's not met in two subject areas. We have
12 that on discussion this afternoon. I think (inaudible) is
13 tomorrow. It might be this afternoon. That we've told
14 districts, given, you know, if we have a lot of parent opt
15 out, we will use due discretion as we look at that, and
16 what district provide. That doesn't quite answer your
17 question.

18 The second issue though is beyond our
19 control. And that's the federal government. The federal
20 government requires 95 percent participation, whether we
21 like that or not, as it relates to the required testing
22 that they dictate. So that puts us in two different
23 issues. One you could modify your rules and change your
24 accountability system at some point, and that's tied to our
25 waiver, and we can all talk about that. The second issue



1 you run against, and -- which wasn't clear about from your
2 motion -- that does cause us a problem with the feds,
3 whether we like it or not. Okay, did you want to say one
4 quick thing though? Go ahead.

5 MR. DYLAN: Vice Chair, I think this is on --
6 I think what the commissioner mentioned is accurate. The
7 only other thing -- so when you look at participation
8 rates, the expectation from USDOE is that you meet a 95
9 percent threshold. They actually have a requirement that
10 all kids take the state assessments, that matches what the
11 state assessments -- the statute that we have here in
12 Colorado is.

13 The 95 percent came into play through No
14 Child Left Behind, to give districts some latitude, some
15 ability to deal with issues that came from kids being out
16 sick, different pieces of things like that that happened
17 over the years. The -- in it's -- in our waiver to USDOE,
18 our NCLB waiver, one of the conditions of the waiver,
19 expectations that states have, some meaningful consequence
20 to schools and districts if they fail to meet that 95
21 percent threshold.

22 In a letter from USDOE to Alaska, which we
23 provided, I think, to the Board as background, I'll just
24 read really what they specifically -- Alaska had the same
25 issue come up. And they said, "In addition, all SEAs with



1 approved ESA flexibility plans," which is the waiver, "have
2 included specific consequences in their accountability
3 systems for any school that misses the participation rate,
4 and must implement this component of their accountability
5 systems with fidelity."

6 So what you'd have to do, Madam Chair, if --
7 if you wanted to change what's currently in our USDOE
8 waiver, is you'd have to submit an amendment to the feds
9 saying what you wanted to change. You'd have to go through
10 that process of negotiating that amendment, and then see if
11 they would approve it. You could also -- so that's under
12 our current waiver right now, which expires at the end of
13 the summer. If you wanted to include a different
14 consequence in the waiver that we have going -- that we are
15 going to submit at the end of March to USDOE with your
16 approval, you could -- you could have changed the current
17 consequences that we have in state statute, and that we
18 have in a state board rule around participation rates and
19 you could submit that to USDOE, and that would go through a
20 negotiation process as we -- we work towards a new waiver.
21 So there's two issues at play there. I hope that helps
22 clarify it a little bit.

23 MR. HAMMOND: The only thing I will
24 conclude, Madam Chair, is that one is our own
25 accountability system, it's tied obviously with the federal



1 issues, but what I worry about, you know, get yourself and
2 me, in the same issue that we're facing today of waivers.
3 Because you're waiving something that can't -- you're
4 asking something not to be enforced that is directed to us
5 from the federal government that funds we've received. So
6 we could find ourselves back in the same position as we are
7 today, which would then force me to ask for another opinion
8 from the Attorney General's Office concerning the 95
9 percent. Not tied to our accountability system, but tied
10 to what the Federal Government would do. But I just make
11 that point to you.

12 MS. MAZANEC: Excuse me?

13 MADAM CHAIR: Yes, Pam?

14 MS. MAZANEC: What if -- what if districts
15 have, you know, the administration has nothing to do with
16 what parents decide; suppose we hold districts not liable
17 for the decision of the parents when they decide to not
18 allow their children to take part? I mean, that is
19 separate. And -- and we have 160 districts that didn't say
20 "yay" or "nay." I mean, they're -- they're going through,
21 they haven't asked for a waiver, and just supposed that 50
22 percent of kids in those districts, parents who have the
23 right to say "no" to the test under USDOE; don't they have
24 the right to say "no" to a test?

25 MR. DYL: There -- perhaps the best way to



1 put that is that there's -- there's really no enforcement
2 mechanism against parents in state or federal law. The
3 enforcement mechanisms are entirely against districts and
4 states. So nobody is necessarily going to come, you know,
5 come against parents.

6 MS. MAZANEC: Right, against parents. So if
7 parents decide not to, I think we should not hold districts
8 liable when parents decide not to take -- not to have their
9 kids take the test.

10 MADAM CHAIR: And I don't think we do.
11 Isn't that what you just said, or not?

12 MS. MAZANEC: No, he --

13 MR. DYL: No, what -- what -- what happens
14 is that districts are held -- are held accountable for
15 that. And I believe what the -- you know the content of
16 the motion is that we would not hold districts accountable
17 for the 95 percent threshold. My one comment on that, is
18 that since it's fortuitous that next month we'll be -- or
19 you'll be submitting an application for a waiver, perhaps
20 if Mr. Durham would consider a modification that --
21 directing the department to request a waiver of the 95
22 percent requirement. At this point in time, unfortunately,
23 we're bound by -- you know, by the waiver language. But it
24 is being renegotiated.

25 MADAM CHAIR: Steve?



1 MR. DURHAM: I won't -- not modify the
2 motion in that way. Unfortunately, we --

3 MS. NEAL: Madam Chair?

4 MADAM CHAIR: Yes?

5 MS. NEAL: Excuse me, Steve, I spent quite a
6 bit of time with the parliamentary procedure thing, and
7 parliamentary procedure requires that every Board member
8 get to speak before the Board members come back, so that we
9 are not dominating the conversation. That's just an aside.
10 I just had noticed that.

11 As far as your motion goes, Steve, number
12 one, I prefer to focus on one issue at a time, and I will
13 point out that tomorrow you will be taking up the issue of
14 parental consent. So I think that is a separate issue that
15 shouldn't be concerned -- be in this motion. Number two,
16 again, parliamentary procedure, this is the same thing we
17 did last month in which you put forward a motion that is
18 not written out, that nobody has seen and asked us to vote
19 on it today. That is strictly against -- I mean, you can
20 do it, but I think as a respect for fellow Board members,
21 everybody needs to have time to see this motion in writing,
22 and talk about it. And so I would surely -- I would
23 suggest that we not vote on it till next month.

24 I agree with much of what you say, Steve, I
25 really do. You know, you -- I keep trying to convince



1 people, you make a lot of good points, and I understand
2 that. But also, you mentioned legislative; well, we've had
3 the legislature and we have them again this year. And if
4 we wait for legislation to step in and fix this problem, I
5 mean I continue to be hopeful, I'm an eternal optimist, but
6 I don't think the legislature is going to fix this problem
7 for us. And so I wouldn't -- not because -- I would like
8 to see the motion written out. I would be comfortable on
9 voting for it today.

10 I also have to mention -- I mentioned this
11 before, I think sometimes we don't realize what havoc we
12 cause in the schools. Schools are listening to this, the
13 school districts. You've got some that are for it, and
14 some that are against it, and they don't know what the
15 legal ramifications are. They don't know what's going to
16 happen to them if they vote -- you know, if this happens,
17 will they lose their Title 1 funds? You know, this is --
18 we really have to consider what the schools are thinking
19 and talking about, because that's who we're there to
20 represent. So I would suggest that you -- sometime today,
21 rephrase the motion and put it in writing so everybody
22 could see it, and that we not take it up until next month.
23 And also, again, remember that we later today, or tomorrow,
24 I guess it is, have a chance to take up the parental
25 consent thing. So that's a separate thing that should not



1 be included in this. That's -- that's what I have to say
2 on this idea.

3 MS. MAZANEC: I have --

4 MADAM CHAIR: Thanks, Marcia. Let's let
5 others -- are there any others of you that might comment?
6 Deb? Do you have any comments?

7 MS. SCHEFFEL: I will (inaudible).

8 MADAM CHAIR: Well, she's already had one
9 shot, so we're trying --

10 MS. MAZANEC: Well, but I'd like to -- I'd
11 like to --

12 MADAM CHAIR: Excuse me, we are trying to
13 have a process whereby we all get one shot at it, and then
14 continue. That's Marcia's -- Marcia's rule. Jane?

15 MS. GOFF: Thank you. I -- I need to go
16 back and I need to be firm on where we are with the status
17 of motion making. Do we have a motion on the table --

18 UNIDENTIFIED VOICE: I'd like to make a
19 motion --

20 MS. GOFF: That's strictly related to this
21 current situation? I mean, we have before us waiver
22 requests. My understanding is that on the agenda was a
23 motion -- was action on granting the waivers. Is that what
24 we need to handle with --

25 MS. BURDSALL: There is a -- Madam Chair,



1 Madam Vice Chair; there is a motion on the table that
2 addresses this issue. If there is a desire of the Board to
3 further clarify or amend the item before you, you certainly
4 can as a matter of procedure, it would just take a simple
5 majority vote to -- to -- if there is a -- but in my view,
6 the motion that is on the table is -- is properly before
7 the Board. There is not a second.

8 MADAM CHAIR: Can we --

9 UNIDENTIFIED VOICE: I second.

10 MS. BURDSALL: It was seconded.

11 MADAM CHAIR: Can you vote to delay? We ask
12 to delay it, per Marcia's request?

13 MS. BURDSALL: You now have a second, so
14 this motion is before -- this motion is now properly before
15 the Board for a vote.

16 MS. FLORES: Okay, and then can I make a
17 motion that cleans up his --

18 MS. BURDSALL: The motion has been seconded,
19 Dr. Flores, so that motion is before the Board for a vote.

20 MS. NEAL: I wonder if Pam has anything to
21 say on this.

22 UNIDENTIFIED VOICE: No.

23 MS. MAZANEC: Pam would like to have the
24 motion repeated.

25 MS. NEAL: Good, thanks, Pam.



1 MADAM CHAIR: Mr. Durham, would you like to
2 repeat the motion.

3 MR. DURHAM: You are really testing my
4 memory. First of all, I would be happy to withdraw the
5 motion so we could at least discuss Dr. Flores' suggestion
6 and I will remake it if -- depending on whether her
7 suggestion -- we like it, and vote on that. So I will be
8 happy to withdraw the motion with the consent of the
9 second, and then let Dr. Flores discuss her motion.

10 UNIDENTIFIED VOICE: I consent.

11 MS. FLORES: And mine is really just
12 cleaning and sticking to the issue with the parents,
13 because we have heard from parents. I mean, it's -- my
14 computer is full of letters --

15 MADAM CHAIR: Go ahead and make your motion,
16 please.

17 MS. FLORES: Okay. I -- I make the motion
18 that we do not hold districts liable for the decision of
19 parents when these parents decide not to allow their
20 children to take PARCC.

21 MADAM CHAIR: Is there a second?

22 MR. DURHAM: I'll second that.

23 MADAM CHAIR: Discussion? Go ahead.

24 MS. FLORES: Also, we know that 160
25 districts did not ask for a waiver, and that's not saying



1 anything. I think that people who ask for waivers did it
2 because in their heart they know this is not right, and so
3 we can't -- we can't -- we can't hold districts liable for
4 what parents -- when parents want to do the right thing for
5 their kids.

6 MADAM CHAIR: Other comments? Pam? Or
7 Jane? I'm sorry, I'm having trouble -- Jane, sorry.

8 MS. GOFF: I know --

9 MADAM CHAIR: Yeah, I know.

10 UNIDENTIFIED VOICE: I should be used to the
11 (inaudible).

12 MS. GOFF: Thank you, let me gather a
13 thought here. I -- I agree that's a topic worth
14 discussing, but I'm -- I can't help but think what we're
15 doing is we're splitting two issues here. The issue before
16 us immediately, motion or not, is what -- what action to
17 take in regard to these waivers by waiver requests by
18 school districts. To me, the other -- the parent decision
19 and options, or flexibilities that are in development
20 around that issue are -- is another matter entirely.
21 Pertaining to your motion, Val, particularly, I -- I don't
22 know. I don't agree that we are in a position to basically
23 change our current law, simply in regard to where we are
24 with our accountability requirements. That is something
25 that we will be discussing, I would hope, at length. The



1 possibilities around that and in light of the waiver
2 opportunity, and the work going on. I'm just saying, I'm
3 not discounting that that is an absolutely worthy topic to
4 spend time on, but I am of the -- I am agreeing with the
5 idea of delay until we know in general, and particular with
6 respect to our state laws, our accountability requirements.
7 And I'm just feeling that this is -- this is premature, but
8 certainly worth perusing for conversation.

9 MADAM CHAIR: Steve?

10 MR. DURHAM: Well, I think --

11 MS. NEAL: Angelika?

12 MADAM CHAIR: Just a moment --

13 MS. NEAL: One more --

14 MADAM CHAIR: Just one second.

15 MS. NEAL: Okay.

16 MR. DURHAM: Okay, did she --

17 MS. NEAL: Me or Steve?

18 MR. DURHAM: She can go ahead.

19 MADAM CHAIR: Go ahead, Marcia.

20 MS. NEAL: I was just going to echo what
21 Jane said, and -- and also the fact that we're talking
22 about the waivers and the Attorney General's opinion. None
23 of that was -- the parental consent was not a part of that
24 argument. I think we really muddied the waters. We can
25 take it up separately, that's fine, but I think we really



1 muddy the waters if we throw that in with the other issue,
2 which we've all spent a lot of time talking about. And I
3 really would like to hear the motion. I can't see it since
4 I'm here. But I would not be able to vote on it, unless I
5 had a more clear of idea of what it said.

6 MADAM CHAIR: Okay. Deb?

7 MS. SCHEFFEL: It strikes me that there's
8 two issues. Dr. Flores' motion suggests that we're asking
9 CDE to hold the districts harmless if parents exceed the
10 five percent opt out or refusal; that's one issue. The
11 other issue is the waivers on the table, and are we tabling
12 a decision on the waivers --

13 MADAM CHAIR: I hope not.

14 MS. SCHEFFEL: Are we voting on the waivers?
15 And I think Steve's original motion had a portion in the
16 language saying we would continue to accept waivers, but we
17 would table the vote on the waivers. So I think we
18 probably need to vote on Dr. Flores' motion first, unless
19 it's withdrawn, and then address the waiver issue as to
20 whether we are tabling them or not.

21 MS. NEAL: Fine.

22 MADAM CHAIR: Can I just make a comment?

23 MS. NEAL: Yeah, you're allowed.

24 MADAM CHAIR: I am allowed? Okay. We will
25 bringing up the parental rights tomorrow, Val, and I --



1 MS. FLORES: But this is different.

2 MADAM CHAIR: Well, it is different, but it

3 --

4 MS. FLORES: The other is different.

5 MADAM CHAIR: Okay, go ahead, Steve.

6 MR. DURHAM: Well, it's -- you know, it's
7 materially different, and -- and I do support it, because
8 it's in the context of penalties that accrue to districts
9 for non-compliance. And I think inherent in the motion, if
10 I understand it, is that these penalties can't be -- the
11 penalties in law couldn't be applied unless the district
12 for some reason just didn't take the test. Just didn't
13 offer the test, and didn't follow through. But if -- you
14 know, if you have -- if you have a sick out like you did
15 with the seniors, and 40 percent of them refused to take
16 the test, that's -- that's the end of the discussion.
17 There's no penalty applied, as I understand Dr. Flores'
18 motion. And -- and unfortunately, the -- the amendment I
19 have tomorrow, really doesn't discuss penalties, it really
20 discusses the conduct of districts, and tries to admonish
21 them not to do something. This removes the causal pressure
22 for them to do something.

23 So hopefully they wouldn't continue to do
24 what they've done. We'll have to see, and we'll still have
25 the motion tomorrow, but I think this -- this motion makes



1 sense. It's a good -- it's a good compromise. It removes
2 the pressure. And I'm going to say two things: One, in
3 the 40 plus years I've been at this business, I don't know
4 how many threats I've lived through, the federal government
5 withholding money. I've yet to see it. Now, it doesn't
6 mean they wouldn't do it, it's just that I haven't seen it
7 yet in all of the threats they've made. And they have huge
8 political problems if they do.

9 They get to deal with Senator Bennett, and
10 they get to deal with Senator Gardener when Colorado
11 doesn't get its share. And that's generally something they
12 don't want to do, and they tend not to impose those kinds
13 of penalties. So is it a risk that I'm willing to take?
14 The answer is "yes." And do I think it's a significant
15 risk? The answer is "no." And -- and I think one of the
16 things the Attorney General has made clear, is that very
17 cleverly, all of the options to deal with these testings
18 have been knit closed with -- with legislation that really
19 resulted in sole source contracting with what appeared to
20 be no-bid selections, with all kinds of things that raised
21 issues.

22 And this is the, as far as I'm concerned,
23 the minimal amount we can do to deal with this, because the
24 -- the realistic in what we should be discussing, those
25 avenues have been closed. So I intend to vote yes, and



1 hope that the motion passes. And then I will make the
2 motion after that, relative to the delay on action on the
3 other -- on the waivers.

4 MADAM CHAIR: So I need to ask a question:
5 The motion before us does not relate to the waivers?

6 UNIDENTIFIED VOICE: No.

7 MADAM CHAIR: At all. And so I'm trying to
8 figure out why this is a part of this discussion. And
9 whether we can say this is just for another time?

10 MS. FLORES: Well, we're --

11 MADAM CHAIR: I'm asking here, just a moment
12 please.

13 UNIDENTIFIED VOICE: Madam Vice Chair, if
14 it's the will of the Board to take up this matter as it
15 relates to waivers, it would be appropriate. It
16 technically could require a motion to amend the agenda, and
17 to include this, but if it is the will of the Board to take
18 this matter up now, under Robert's rules, it's appropriate
19 to do so.

20 MADAM CHAIR: Okay. Shall I call --

21 MS. NEAL: I have a Robert's rules type
22 question too. Well, I guess it is. Has there been any --
23 there was some preliminary discussion, and the informal
24 discussion about what -- what kind of legal legs you have
25 to stand on if somebody were to -- to choose to sue you,



1 because you didn't -- you didn't grant -- or you didn't
2 uphold the federal law, or the state, for that matter. Who
3 would -- who would represent? Maybe Tony can answer that.
4 What -- if you needed legal representation, where would it
5 come from?

6 UNIDENTIFIED VOICE: For individual parents?

7 UNIDENTIFIED VOICE: No, for us.

8 MS. NEAL: Elizabeth, (inaudible).

9 MS. MERZ-HUTCHINSON: I'm sorry, this is
10 Michelle Merz-Hutchinson, if you could -- could you --

11 MS. NEAL: I'm gonna have to leave, but Cami
12 is listening, she'll tell me what you said. Okay?

13 MS. MERZ-HUTCHINSON: Well, I'm not sure I
14 understand the question. Whom is -- would be needing --

15 MS. NEAL: We talked about -- the Attorney
16 General says you cannot grant waivers. Now, if Steve's
17 motion goes through and we -- I know it doesn't say "grant
18 waivers", but it says that we have the possibility of
19 granting waivers or -- you know, it's heading in that
20 direction. I'm just saying if legal -- if there's legal
21 opposition, who will represent the Board?

22 MS. MERZ-HUTCHINSON: So you were asking me
23 whether the Attorney General's Office would represent the
24 Board, if the Board were to vote to grant the waivers,
25 despite the advice from the Attorney General that the Board



1 is not of the power to do so. Is that -- is that a correct
2 understanding of the question?

3 MS. NEAL: Yes.

4 MS. MERZ-HUTCHINSON: All right.

5 MS. NEAL: Give me an answer.

6 MS. MERZ-HUTCHINSON: Well, I don't know
7 that I can give you a definitive answer as I sit here
8 today, but typically in circumstances similar to that, the
9 Attorney General has sought conflict counsel for a client
10 when the Attorney General feels they cannot, within their
11 ethical obligations, continue a representation. So my
12 thought is that it would be likely that the Attorney
13 General would not be counsel in such a scenario.

14 MADAM CHAIR: Thank you. Any other
15 comments? Questions?

16 MR. HAMMOND: Madam Vice Chair?

17 MADAM CHAIR: Sure.

18 MR. HAMMOND: I just have one comment on the
19 consequences to school districts. We currently have a
20 approved waiver with USDOE to NCLB that has a meaningful
21 consequence that's a condition of that for schools and
22 districts that don't meet 95 percent participation rate.
23 That's enforced right now. If this motion were to pass, we
24 would have to go back to USDOE to negotiate an amendment to
25 our current waiver, and that would be a process. So I just



1 wanted to be clear that we are under a current condition;
2 if districts were to operate with that current language and
3 -- and the guarantee of consequences, I think we'd have to
4 work with USDOE to see if we could accomplish that request
5 from the Board. I -- I --

6 MS. FLORES: But -- but we're not talking
7 about districts, we are talking about parents.

8 MADAM CHAIR: Please.

9 MR. HAMMOND: Madam Vice Chair?

10 MADAM CHAIR: Let him finish.

11 MR. HAMMOND: So there are two things that
12 play with respect to waivers -- you've got the USDOE
13 current NCLB waiver with a condition inside of that that
14 requires participation consequences from the SEA and the
15 LAA. So it would have -- again, have to work through that.
16 The upcoming waiver submission that we will be submitting
17 in March, also has the opportunity to adjust or amend that.
18 But you can always amend the current waiver as well. So
19 you -- there's a process to do this, I just wanted to
20 outline that their -- we'd have to go through that process
21 with USDOE. Because the state follows through on the
22 consequences. USDOE just has the requirement.

23 MADAM CHAIR: Right. Are we out of
24 compliance with the law -- I mean, does the waiver, the
25 agreement that we have, have the same impact as law? So do



1 we have a motion that again might be deemed unlawful?

2 MR. DYL: Well, as I understand it, this
3 motion would probably violate the terms we agreed to on the
4 NCLB waiver. I think that's what -- what the assistant
5 commissioner is getting at, that you know, we'd have to go
6 back in and attempted to renegotiate that.

7 MS. FLORES: But -- but this has nothing --

8 MADAM CHAIR: Please wait until you're
9 called on. Deb?

10 MS. SCHEFFEL: And my thought would be that
11 the waiver is up for renegotiation in two weeks, when March
12 begins. So I think the timing is actually good.

13 MS. FLORES: Well, I don't think -- I think
14 this is talking to a reality where most districts are not
15 asking for waivers. They are not. I mean, we have 20
16 districts of 179 districts and most districts are willing
17 to do what they are willing to do. But parents now, that's
18 a different matter. We don't know what parents are going
19 to do. We do in a way that from the letters that we've
20 gotten from parents who say they will not allow their
21 students to take this test. So I'm saying, why make it --
22 why hold districts harmless, when most of them, many of
23 them, are willing to -- you know, to abide by the law, give
24 the test and such, and we have those parents that will not.
25 And why hold these districts harmless for the will of the



1 parents. Which they have the right to do.

2 MADAM CHAIR: Thank you, Val. Thank you.

3 MS. FLORES: That's it.

4 MADAM CHAIR: Pam?

5 MS. MAZANEC: Why don't we -- why don't we
6 slightly amend to the motion, to say, let's table the --
7 the decision right now. Continue to accept waivers, and
8 direct the Department to seek an appropriate waiver. Does
9 that make sense?

10 MADAM CHAIR: That's for next year.

11 MS. MAZANEC: For next year?

12 MADAM CHAIR: That's for next year. But I
13 think the way -- if I'm not mistaken, the waivers are for
14 the immediate assessments.

15 MS. MAZANEC: Yet we can't negotiate any
16 change in that now?

17 MADAM CHAIR: Let me get some input, please.

18 MR. DYL: Madam Vice Chair, to Board Member
19 Mazanec's question, whenever there's a change in statute,
20 or issues that pop up over the course of the approved
21 waiver that we currently have with USDOE, there is an
22 amendment process to that waiver that can be submitted at
23 any time. So we could -- we could under the current
24 waiver, submit an amendment requesting a change. How quick
25 and how -- it could -- it could be, you know, something



1 that they could put together relatively quick, but in my
2 experience, worth working with USDOE. It takes some time
3 to get those amendments approved. Could you get it
4 approved before the next one is actually approved? The one
5 that we would be looking to submit in March? Possibly.
6 But that would be the process to change your current
7 waiver, would be to submit an amendment.

8 MADAM CHAIR: Steve?

9 MR. DURHAM: Well, first of all, if you'll
10 excuse the pejorative comment, I think the Attorney
11 General's statement is just phooey. It's not federal law.
12 The federal government cannot make laws relative to how we
13 do, and how we enforce education. They can, as they did in
14 the best example, is the 55 mile an hour speed limit. And
15 was there a federal 55 mile an hour speed limit on
16 interstate highways? There never was. How did they
17 enforce it? They threatened to withhold federal funds.
18 What did some states do, like for example the State of
19 Montana? They occasionally sent a patrolmen out and they
20 picked people up that were doing 90 plus.

21 So we -- this -- what -- what Dr. Flores
22 suggests can go into effect. The Commissioner cannot
23 enforce the 95 percent with penalties against the --
24 against any school district. And the option then -- then
25 it goes back to the federal government. You really want to



1 withhold money? I -- the answer is: I doubt it.

2 So this is not law, we are not violating any
3 law. We are not violating anything, we were forced into an
4 agreement on the exception of federal funds, just as we
5 were with the 55 mile an hour speed limit just as the state
6 of Montana was. There are lots of ways to ensure that your
7 citizens have choice, and this is certainly a choice that
8 parents ought to have, and they should have it without
9 penalty or coercion.

10 So if the federal government decides to take
11 action, then I presume that the Attorney General's Office
12 will try and defend us against that action, and I presume
13 our representatives in Congress will also try and defend us
14 against this action. So it's not law, and so I hope we'll
15 vote for the motion, there will be no penalties for -- as a
16 result of parental refusal to take these tests. Period.

17 MADAM CHAIR: Can we call for the question?
18 We have a motion and a second. Michelle, did you have
19 something?

20 MS. MERZ-HUTCHINSON: Well, I just wanted to
21 clarify my comments were not related -- were related solely
22 to the matter on your agenda, and not to the issue of the -
23 - with respect to the federal government. So just with --
24 to clarify that point.

25 MS. BURDSALL: Madam Vice Chair, would you



1 like me to call the roll?

2 MADAM CHAIR: Yes, please.

3 MS. BURDSALL: Steve Durham?

4 MR. DURHAM: Aye.

5 MS. BURDSALL: Dr. Flores?

6 MS. FLORES: Aye.

7 MS. BURDSALL: Jane Goff?

8 (Pause)

9 MS. GOFF: I'm sorry -- no.

10 MS. BURDSALL: Pam Mazanec?

11 MS. MAZANEC: Aye.

12 MS. BURDSALL: Marcia Neal? Doctor --

13 CAMI: This is Cami, she stepped away.

14 MS. BURDSALL: Dr. Scheffel?

15 MS. SCHEFFEL: Yes.

16 MS. BURDSALL: Dr. Schroeder?

17 MADAM CHAIR: No.

18 (Pause)

19 MADAM CHAIR: Steve?

20 MR. DURHAM: Thank you, Madam Chair. I

21 would then move that the consideration of the waiver

22 request layover until the next either special or regular

23 meeting of the Board.

24 MADAM CHAIR: Is there a second? Deborah

25 seconds?



1 MS. BURDSALL: Steve Durham?

2 MR. DURHAM: Aye.

3 MS. BURDSALL: Dr. Flores?

4 MS. FLORES: Aye.

5 MS. BURDSALL: Jane Goff?

6 MS. GOFF: Aye.

7 MS. BURDSALL: Pam Mazanec?

8 MS. MAZANEC: Aye.

9 MS. BURDSALL: Marcia Neal? Dr. Scheffel?

10 MS. SCHEFFEL: Yes.

11 MS. BURDSALL: Dr. Schroeder?

12 MADAM CHAIR: No.

13 (Pause)

14 MADAM CHAIR: Ms. Markel, I wonder if you'd
15 be good enough to announce an executive session, please?

16 MS. MARKEL: An executive session has been
17 noted for today's State Board Meeting in conformance with
18 24-6-402(3)(a) CRS, to receive legal advice on specific
19 legal questions pursuant to 24-6-402 (3)(a)(II) CRS, in
20 matters required to be kept confidential by federal law or
21 rules or state statutes pursuant to 24-6-402 (3)(a)(II)
22 CRS.

23 UNIDENTIFIED VOICE: (Inaudible).

24 MADAM CHAIR: Do I have a motion to go into
25 executive session, please? Do I have a motion to go into



1 executive session? Hello. Thank you, Deb. Second? Val.

2 (Meeting adjourned)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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