BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON EDUCATION

EDUCATION ROUNDTABLE

DISCUSSION ON THE CHALLENGES OF
PROVIDING EDUCATION TO STUDENTS WITH SPECIAL NEEDS

Senate Capitol Building
172 State Street, Room 124 Cap.
Albany, New York 12247

October 12, 2011
10:00 a.m. to 3:00 p.m.

PRESIDING:

Senator John J. Flanagan
Chair

SENATE COMMITTEE MEMBERS PRESENT:

Senator Kenneth P. LaValle

Senator Carl L. Marcellino

ALSO IN ATTENDANCE:

Molly Breslin
Senator Flanagan's Office

ROUNDTABLE PARTICIPANTS:

Douglas Bailey
Coalition of 853 Schools

Ellen Bergman
Superintendent
Mt. Pleasant Blythedale, Coalition of Special Act School Districts

Jim DeLorenzo
Statewide Coordinator for Special Education
New York State Education Department

Ed Durivage
Division of Budget
New York State

Heather Evans
Hinman Straub
School District of Special Acts

Valerie Grey
Senior Deputy Commissioner
New York State Education Department

J. Brad Herman
George Junior Republic Union Free District,
a Special Act School

Mary Kogelmann
Director of Fiscal Services
New York State Education Department

Richard Lasky
Coalition of 853 Schools

Lee Lounsbury
Associate Director
The Council of Family and Child Caring Agencies; and the Coalition of 853 Schools

Pam Maderios
Greenberg Traurig
853 Freestanding Day Schools

Jessica Morelli
New York State Association of Counties

ROUNDTABLE PARTICIPANTS:

Raymond Schimmer
Vice President of the Coalition of 853 Schools;
and Executive Director of Parson Child and
Family Center, Albany, NY

Mark Silverstein
Superintendent of Schools
Hawthorne Cedar Knolls Union Free School District;
and Coalition of Special Act School Districts

William Wolff
Executive Director of LaSalle School; and
President of the Coalition of 853 Schools

David Wakelyn
Deputy Secretary for Education
Governor's Office

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SENATOR FLANAGAN: I want to thank everyone for coming, and I want to go through a couple of different things.

If I -- I'll say it at least a couple of times: I really appreciate everybody taking the time of being here.

A couple of basic things, since I did this almost right away: I would steer clear of walking anywhere right in middle here. You can, not only trip up the mics, but, trip.

So, that's number one.

Number two: Just so everyone's aware, we have fashioned this to be a, quote/unquote, legislative roundtable, and you'll have to use your imagination. I know it's not particularly round, but the gist is the same.

The idea was, not to really have a hearing, not to have something more along those lines.

We are recording this, not to send it out to people, but, rather, to just give everyone a copy. So, when we're done, everyone can just have a -- obviously, a complete summary of things that were discussed.

And, what I would like to do, very quickly,

and I'm going to put Tim on the spot, to start, I would like everyone to quickly introduce themselves, and then we can try and get started.

Tim?

And, this includes everyone who is seated away from the table.

(Back-row participants introduce themselves.)

SENATOR FLANAGAN: Pam, why don't we start with you.

PAMELA MADERIOS: Pam Maderios, with Greenberg Traurig.

I'm with the 853 Freestanding Day Schools.

HEATHER EVANS: Heather Evans, Hinman Straub, with the School District of Special Acts.

J. BRAD HERMAN: Brad Herman, George Junior Republic Union Free District, a Special Act.

ED DURIVAGE: Hi, I'm Ed Durivage, from the Division of Budget.

MOLLY BRESLIN: I'm Molly Breslin, from Senator Flanagan's office.

SENATOR LaVALLE: Ken LaValle, Committee members.

SENATOR MARCELLINO: Senator Marcellino, Committee member.

VALERIE GREY: Good morning. Val Grey, executive deputy commissioner at SED.

MARY KOGELMANN: Mary Kogelmann, director of fiscal services, State Education Department.

JAMES DeLORENZO: Jim DeLorenzo. I'm the state coordinator for special education for the State Education Department.

ELLEN BERGMAN: Ellen Bergman. I'm from Mt. Pleasant Blythedale. We're a Special Act District.

MARK SILVERSTEIN: Mark Silverstein, Superintendent of Schools, Hawthorne Cedar Knolls Union Free School District, a Special Act School District; and, president of the Special Act Coalition.

BILL WOLFF: I'm Bill Wolff, the executive director of LaSalle School; and, President of the Coalition of 853 Schools.

RICHARD LASKY: I'm Dick Lasky, affiliated with the 853 CAFCA Coalition.

DOUG BAILEY: And, I'm Doug Bailey, affiliated with the 853 Coalition as well.

LEE LOUNSBURY: And, I'm Lee Lounsbury, from the 853 Coalition; and, The Council of Family and Child Caring Agencies. "CAFCA."

SENATOR FLANAGAN: Okay, great.

Let me start by thanking my colleagues: Senator LaValle, who obviously is Chair of the Higher Education Committee; and, Senator Marcellino, who chairs the Investigations Committee, in the Senate.

My colleague is deeply immersed in SAT issues right now, gearing up for them.

Senator Marcellino has been doing yeoman-like work with the MTA and the Long Island Railroad, and LIPA, and issues like that.

So, I do appreciate the fact that everyone is here.

And, again, let me -- I would respectfully ask, if you are going to speak, just so everyone else can hear you, because it was a little difficult for me to hear everyone's name.

So, if you could just try and speak into the mic, and speak up, that would, frankly, help everybody out.

And, the point of this is, let me put it this way: Imitation is the highest form of flattery.

Senator LaValle had done a legislative roundtable earlier in the year on higher-education issues. And, my only failure was, that I was unable

to attend his meeting, but the feedback from it was very positive, because it was a candid, sort of that I describe it, adult discussion about issues involving higher ed, and the feedback was very good, including from our staff.

What I would hope that we could accomplish, is having a legitimate, detailed, frank discussion about some of the issues affecting the financing and the education of children in the types of schools that we're talking about.

This is not meant to be adversarial in any way, shape, or form. This is, hopefully, to foster a dialogue.

And, I -- I gave this description yesterday to some of the folks I work with, and, for the attorneys in the room, this will have some applicability.

When you go to law school, one of the things you study, and you try and study, is the rule against perpetuities.

And "rule against perpetuities" is a part of the law, that, there's -- if there's 5 million lawyers in the world, there's only about 5 or 6 lawyers who actually understand it.

And, I remember, taking the bar exam, and

they tell you: It's never on the exam. Never, ever, ever on the exam.

And in the unlikely instance that it is, it's only on the multiple-choice part.

I took the bar exam. And, I remember sitting there, taking the bar exam, saying: This is -- it was an essay.

It was one of six essays, and it was on the rule against perpetuities.

And I'm thinking: It can't be. Everyone said, it's never, ever, ever, ever on this exam.

P.S. I came out of the exam, and didn't know if I passed, or not. But, fortunately, I did pass.

And, when one of my colleagues acknowledged that on the Assembly floor a couple of months later, former Assemblyman John Dearie came up to me, and said: That's great, I'm so happy for you. And, congratulations, you passed the bar first try.

He goes: You know, my guy in my office, he got totally tripped on that -- up on that "rule against perpetuities" question.

So, I learned, that it can be on there. But, my real point is, that, these types of issues, I think, are far more complicated, and technical, and emotional in some ways, and very sensitive.

So, I don't want to sit here -- and I don't want to speak for either of my colleagues.

I'm not going sit here and tell you that I am intensely knowledgeable about how all this works. Frankly, we want to hear what you have to say.

And, I'm not really sure I met anybody who says that it's working really well. And, that's not a value judgment, it's not a criticism of anybody.

I think you have various parties. Obviously, you have legislators, you have the Executive.

David Wakelyn will be coming down later, but, he's obviously the Governor's deputy secretary for Education.

You have a role -- a critical role played by SED, DOB, and, obviously, the people who are delivering the services, which is what we're trying to focus on.

So, I would just reiterate that the idea is: How do we have some discussions about: What works well? What doesn't? What are some of the ideas?

And, I would close on this point: Initially, I would hope that if anyone has a particular criticism, that it is joined by some solution that you think might be helpful.

Whether it's in a regulatory capacity; I

think, if we come out of here and the only thing we hear is, "That we need more money," then I won't think that we're being as productive as we can.

So, I spoke to Val.

And, Val, I really appreciate you and your colleagues joining us.

Could you start by sort of generally describing the process; the rate-setting process.

And, can you include some, like, timeline aspects, because, you know, one of -- in, certainly, some of my initial review, it seems like there are timing questions: When can you appeal? And, how does it -- how is it supposed to work, from your perspective?

VALERIE GREY: Well, Mary Kogelmann is the expert in this area; so, maybe I'll just do a high level, and then she can get into the timelines.

I think, from the outset, I think it's fair to say that, oftentimes, the process takes far too long, but, there are lots of different reasons for that.

You know, there is -- I don't want to go into detail about how the rates are constructed, since I know the providers are here, and all the details are in this reimbursable cost manual, but,

essentially, the way it's supposed to work is:

The providers report their costs. There are limits on how much of those costs can be administrative versus programmatic;

There are things that are allowable, and things that aren't allowable. And, you go through all of this, and you come up with what's left.

But, then, the "what's left" is limited by -- what is it called? -- "allowable growth," which, for the last three years has been zero percent, due to the budget crisis.

So, it's almost like we -- and I think Mary might disagree with me a little bit -- but I almost feel like we have this whole tuition rate-setting process, but it really hasn't changed anybody's rates for three years, because, it's basically been frozen.

I think that the way that the system works now, I think that it's not very responsive, it's not very flexible, in terms of enrollment changes.

And, that's an area we would like to look at.

I think that the process itself is labor-intensive for everybody involved.

So, to the extent that we could, simplify it, or remove some steps, I think that we would be

supportive of that.

That was really the big picture, but, Mary, what are some of those crucial details, particularly in terms of timeline, that I left out?

MARY KOGELMANN: Okay, well, the whole process starts, every year, on April 15th.

SED is required to submit a rate-setting methodology for the upcoming year -- upcoming school year, which begins July 1, to Division of the Budget.

And, within that, we recommend the growth -- what the growth should be for the next year. And that -- like I said, that's due, according to Section 445 of the Education Law, that's due on April 15th. The Division of the Budget has 45 days to respond to that, and make a determination.

And once that -- and as Val said, for '9-'10, '10-'11, to '11-'12, the growth rate has been zero. And we notify the providers from them, that, what the growth rate is.

And, for the, '11-'12 year -- so, for each year, there is a prospective rate, and there's a reconciliation rate.

So, for '11-'12, we'll have the prospective

rates, and that's what the growth would apply to.

So, again, for '11-'12, it was zero.

We -- the '11-'12 prospective rates; all the prospective rates are built on actual costs from two years prior. So, those are based on the '9-'10 reconciliation rates.

And, so, once the growth rate is set, we go ahead and determine what the rate should be, submit them to DOB for approval, and then get them back out to the providers and schools so that they can start using them to bill.

That's it in a nutshell.

VALERIE GREY: It's probably, also -- it might also be helpful to talk about, how, you know, the schools and the counties do pay these rates in the first instance. There's reimbursement.

I think the preschool is, what, 59 percent for the county.

MARY KOGELMANN: 59 1/2 percent, the state reimburses.

VALERIE GREY: And, then, on the school side, I think that it deals -- it's excess --

JAMES DeLORENZO: Private excess costs.

VALERIE GREY: -- private excess costs. And the reimbursement percentages vary, based on the

school's wealth.

And, so, I just thought it was also important to move it to, who ultimately pays, how that gets reimbursed, you know, because it's all part of the mix.

SENATOR MARCELLINO: How do you determine the wealth? Use the wealth-factor index?

VALERIE GREY: Right, the wealth factor.

SENATOR MARCELLINO: There's no consideration as to the number of children on reduced and free lunch in a particular building that might have a high wealth factor, like the small city that I represent, which has a high wealth factor, but has about 45 percent of the kids on reduced and free lunch?

MARY KOGELMANN: I'm not a State Aid expert, so...

SENATOR MARCELLINO: Well, that's what I'm saying, is, the wealth factor is not indicative of, necessarily, the wealth of the district itself.

VALERIE GREY: Yeah, I don't have my school-aid person here, but we can look into that more.

My understanding is, it's a fairly straightforward, mostly wealth factor. But, that's

all contained within the statutes that get passed each year.

So, I'll bring -- I'll get back to you.

SENATOR FLANAGAN: Mary, can I ask you a couple of things?

You said that, by 445, the end law, you have to set the rates by April 15th?

MARY KOGELMANN: No, no. We recommend the methodology to the Division of the Budget by April 15th.

So, we have to say, for example, for the upcoming school year, which begins July 1, what we think the growth factor should be.

That's one of the things we recommend to DOB, and then, DOB has 45 days to get back to us.

SENATOR FLANAGAN: All right, so, your obligation, by April 15th, you have to report to DOB on what you think should happen?

MARY KOGELMANN: Correct.

I mean, we have -- we use certain CPI cost indexes, and labor -- Department of Labor statistics, to say, okay, so, we use those to determine what we think the growth factor should be.

SENATOR FLANAGAN: Okay, DOB has 45 days to then set the rate?

MARY KOGELMANN: 45 days to say: Okay, this is what we -- you know, we think the growth; we approve it. Or, we think it should be zero growth. Or, we think -- we agree with, you know, whatever they think the growth rate should be, they approve it, they let us know what it should be for the upcoming school year.

SENATOR FLANAGAN: And that's by June 1st?

MARY KOGELMANN: Yeah, 45 days.

Yeah, so, it would be around June 1st.

SENATOR FLANAGAN: Okay, are those deadlines June --

VALERIE GREY: No, no. Wait -- yeah, June 1st.

SENATOR FLANAGAN: Are those deadlines generally met?

VALERIE GREY: I think that there's sometimes been delays. And, when there have been delays, we have set interim rates, so that the -- there is some rate in place as the final rate gets sorted out.

SENATOR FLANAGAN: Okay, if --

VALERIE GREY: So, to frankly answer your question: No, there's often delays. But, we try to ensure that there's some continuity, in terms of

what rates get paid.

SENATOR FLANAGAN: All right, so, if you -- you make a recommendation by April 15th. DOB is supposed to respond to that, at least on paper, by June 1st.

VALERIE GREY: Uh-huh.

SENATOR FLANAGAN: Okay.

If there are delays, does it stem more often from, State Ed not getting it to DOB, or is it DOB sitting on it?

You know, what? That's -- I don't want to characterize it that way.

-- DOB not responding by that date?

VALERIE GREY: I believe that SED has submitted proposals by April 15th of each year.

SENATOR FLANAGAN: Okay. And, then, that -- that's a combination of the prospective rate and the reconciliation rate?

MARY KOGELMANN: No, no. We -- it's, just, that's what the growth would be for the prospective rate for the upcoming school year.

SENATOR FLANAGAN: All right, in your --

And, Ed, feel free to jump in on any of this.

-- but, if I were to just jump out and say to the schools, "Okay, you have a growth rate of

zero percent on the last three years," what would you expect the response would be; that, you know, that is, 15 percent below what our real costs are?

You -- is there a respective haggling back and forth on what those rates are?

MARY KOGELMANN: Once it's -- it's the zero -- once the growth rate is set, then that's what it is.

So, if there are costs -- providers have costs that are going up, they have to reduce other costs so that their overall costs stay the same.

That's what happens with zero growth.

VALERIE GREY: I think, at one point, and I think it might have been earlier this year, when we went back and took a look at what the rates have been, versus what they could have been, based on reasonable COLAs, or the formula running through, I think it was a 60-million difference.

But, again, that sort of comparing to -- that's sort of similar to, you know, school aid would have grown at X, but instead, it's Y.

So, it's -- it's not exactly a, what is the difference between cost and what rates are paid, but, it just gives you some sense of magnitude.

SENATOR FLANAGAN: So, the 60 million is sort

of a macro view of, what, I guess the schools would say?

VALERIE GREY: I'm not sure what the schools would say.

That -- that was -- if you took a look at the last several years, if there had been some sort of COLA in the system, it probably would have driven about 60 million more in funding than what you see today.

SENATOR FLANAGAN: Okay.

And, Mary, to follow up on the part of what you were saying: If the rate gets set, is there an appeals process?

MARY KOGELMANN: Yes.

VALERIE GREY: There's --

MARY KOGELMANN: And, I think a rule of thumb is, about 10 to 20 percent of rates are appealed each year. And that's another thing that can -- you know, can take some time.

And, in the meantime, while providers are -- schools are waiting, then they don't really know what the reimbursement's gonna be, because they don't know if they'll be successful with their appeal, or not.

And the appeal, first, would come to SED, and

then it would be submitted to the Division of Budget for approval -- for review and approval, or action.

SENATOR FLANAGAN: So, the appeal comes to you, but the decision is made by DOB?

VALERIE GREY: We make a recommendation to DOB, and the final decision is DOB's.

MARY KOGELMANN: And we don't always forward all appeals. I mean, we may not -- we may disagree, that -- that there's a reason for an appeal.

So, we may say: No, we disagree. We're not forwarding that.

So, it's -- you know, there's some decision-making going on at SED as well. It's not automatic that it comes to SED, and it, automatically, we agree with everything and submit it to DOB.

SENATOR FLANAGAN: So, you -- SED has the authority to essentially say no to an appeal, absent it going to DOB?

MARY KOGELMANN: Correct, correct.

We can look -- we look at what the -- you know, the rate-setting methodology says, the parameters. We also look at the reimbursable cost manuals.

So, if we don't think it's in compliance with those, we may say: No, we disagree, and here's why.

And, you'll have back-and-forth with the providers.

JAMES DeLORENZO: Everything's not appealable.

VALERIE GREY: Yeah, that's a good point.

SENATOR FLANAGAN: I'm sorry?

JAMES DeLORENZO: Everything is not appealable. There's certain parameters for what's an allowable appeal.

SENATOR FLANAGAN: Okay, and that is guided by, regulation, or by statute, or...?

MARY KOGELMANN: Both.

Probably more regulations and the reimbursable costs manual.

SENATOR FLANAGAN: Okay.

SENATOR LaVALLE: I don't know whether you have this or not, but, could you give us a thumbnail of the three years before the freezes took place, to see what those increases were?

MARY KOGELMANN: I definitely have that back in my office, but I would say, somewhere around 2 to 3 percent per year.

SENATOR LaVALLE: For each year?

MARY KOGELMANN: Yep, yep.

'9-'10 was the first year with no growth.

SENATOR LaVALLE: Okay.

SENATOR FLANAGAN: And, Mary, I'm going to probably continue to display a little bit of ignorance here, but, when you are -- are you setting a rate by individual school?

MARY KOGELMANN: And the program.

The program within the school.

SENATOR FLANAGAN: So, how --

VALERIE GREY: A lot of rates.

MARY KOGELMANN: Lots of rates.

SENATOR FLANAGAN: Lots of rates.

MARY KOGELMANN: Lots and lots of rates, yes.

SENATOR FLANAGAN: Give me a ballpark.

MARY KOGELMANN: I mean, I guess not -- probably not -- if you're not including the BOCES, and some of the school district programs, I think we'd say, somewhere around 800 rates.

SENATOR FLANAGAN: Okay, so, that's for -- are we talking about, Special Acts, 853s?

UNIDENTIFIED SPEAKER: And preschool.

UNIDENTIFIED SPEAKER: Yes.

SENATOR FLANAGAN: And "preschool," I heard

someone say.

MARY KOGELMANN: And preschool.

VALERIE GREY: Preschool.

MARY KOGELMANN: And also, then, BOCES can provide some programs as well -- BOCES provide programs, their summer programs. We set the rates for the BOCES summer special education programs.

SENATOR FLANAGAN: Okay, some of this may be on your website. So, I know that I've worked with our staff, and I've looked at some of this, in not in excruciating detail, but, if you could just give us a snapshot of the cases that you do have.

You know, for, maybe, if you take the last two years, and just see how many times you've had to set rates.

MARY KOGELMANN: So, how many rates we set, per year, for the last two years?

SENATOR FLANAGAN: Yeah.

MARY KOGELMANN: Okay.

And we can break that out by type of provider as well.

SENATOR FLANAGAN: Okay.

And, this is not meant to be a loaded question at all: Do you think it is a proved course

to set the rate, for every school, and every program?

VALERIE GREY: I think I would say, that, it is definitely labor-intensive on everybody's part.

I think that, the individual -- the advantage of rates per -- for each individual provider, is that, one could argue, it tries to take into account the unique situation of each of those providers.

But, I would also point out that, in other arenas, in the Medicaid world, I think in some others, some people have suggested a regional rate for, particular types of services, might be a way to go.

I just throw that out there. That's, certainly, not SED's position, but they're -- you know, you can -- I think in nursing homes, going back to some of my experiences in the -- in a prior life -- nursing homes were -- they're set individually, for many, many years. And, it meant hundreds of nursing home rates.

There was also a similar problem with backlogs on appeals for the nursing home rates.

And, one of the reform measures that was moved forward is a construction of a regional rate,

that still, somehow, took into account the acuity of the population that got served.

SENATOR FLANAGAN: Okay, I assume that there are no legislative proposals on that yet?

VALERIE GREY: Not that I know of.

SENATOR FLANAGAN: I think it would be helpful -- and, I mean, obviously, not today -- but, if we could get some list of recommendations that the Department may have, to make prospective changes, that would be very helpful.

Now, I say that against the backdrop, that, I'm not sure that anybody likes how rates are set, because, you could make the argument that SED and DOB shouldn't even be involved in this. It should be a legislative function.

And, all the folks that we work, on our side, say, like: We don't want to set the rates.

You know, you're just tossing the football from one team to the other.

But -- so that's one of the -- if that's a recommendation, I think that's something that we should be considering.

VALERIE GREY: Yeah, it's -- honestly, it's not a recommendation. It's just, uhm -- it's one of the concepts that I've seen used in other

situations.

So, we'll go back, and we'll think about that, as well as any other ideas that come up at this discussion.

SENATOR FLANAGAN: If I could --

And, obviously, if anyone has questions, please, ask them.

-- but, could we just hear from -- sort of go down the table here, on your general feelings, and maybe with some specificity about, the rate-setting structure, and the process.

And, if there's something that works well, great.

If there's something that is in need of revision, please, please share.

MARK SILVERSTEIN: Mark Silverstein, Coalition of Special Act Districts.

Our main concern is timeliness.

We understand the current fiscal environment, but, to be a proven fiscal planner, and Special Act School Districts are public schools, so we have fiduciary responsibility to manage our money as well, the timeliness factor hurts us.

It hurts us in terms of cash flow.

Many of our districts have significant

amount of "RANs"; revenue anticipation notes. We're paying interest on those RANs. That interest get passed along, and the taxpayer is paying that.

A timely rate would alleviate some of that. Not all of it, because cash flow is cash flow. But, that impinges upon our ability to be good fiscal planners.

And that's what --

SENATOR MARCELLINO: So, what's wrong with the system as it exists?

MARK SILVERSTEIN: It takes too long.

SENATOR MARCELLINO: Well, you're talking about timeliness.

So, what's wrong with the timeliness, as you see it?

MARK SILVERSTEIN: It takes too long to generate the rate, or how the rate gets processed.

And, speaks to a lot of collaboration here. This is not adversarial, so I want to make that clear.

It takes too long.

And then, if you do an appeal, well, I had an appeal that was four or five years out. And I can't be a proven fiscal planner, and that impacts positions.

As a public school, I'm mandated to provide certain services to children.

I can't do it, and then, that leads me to be out be out of compliance, and then, that starts another -- another scenario going. And, it's not an effective system to educate probably the most neediest children in the state.

ELLEN BERGMAN: And another thing that hasn't been mentioned --

I'm Ellen Bergman from Blythedale.

-- is that, every time there's a rate change, from perspective, to certified, to appeal, we have to rebill.

And, so, if we have an appeal, or a reconciliation, that's three years out, we're then going back and rebilling all of the districts.

And -- you know, and I think all of us represent many districts.

I represent upwards of 70 different counties all over the state. And, we have to rebill. Sometimes we actually receive the money, often times we don't.

We're talking, three, sometimes five years out, and we're asking them now to make us whole.

So, timeliness is a really serious issue, if

only for efficiency, and getting in the money that we need in order to run our programs.

SENATOR FLANAGAN: You've made references, you mentioned "certified."

Is that the reconciliation?

ELLEN BERGMAN: When the Division of Budget approves it, it's called a "certified rate."

SENATOR FLANAGAN: So, once you get that, you have to --

ELLEN BERGMAN: We have to bill the individual counties, and they, in turn, bill the districts.

PAMELA MADERIOS: Can we jump around? Do you have limitation?

SENATOR MARCELLINO: Sure, go ahead.

PAMELA MADERIOS: Okay, thanks.

I think Val's explanation was -- was an adequate simplified version, because what they're talking about is the methodology that gets sent over to DOB.

The rates themselves aren't necessarily, the individual rates, aren't certified at that juncture. It's the plan that SED wants DOB to approve, the methodology of: We're gonna do this for regional (inaudible). New providers will be

treated this way. There's a 70/30 parameter of direct and indirect.

So, it's much more than just the growth factor.

So, all of that gets stuck to DOB, and they comment on it, or, whatever. And, then, it goes back to SED, who then churns out the individual rates.

But, that's just -- that's like in the perfect world, because what you also have at play is, the reconciliation that we mentioned, which is, we get a rate in '09. And, then, in 2011, that the costs that we incurred that we reported on our CFR, is going to be reconciled, measured against the reasonable costs that SED determines were reasonable.

So, I might have spent a million dollars in '09. But, on recon, all the little -- not little -- the accountants within SED measure that against what they think are reasonable and allowable costs. And it may not be anything that comes close to what I actually spent.

So, not only am I working in current year, of, I spent this amount of money pursuant to the rate that was generated by the methodology, but I

also have this reconciliation process, which means, that, I'm going to have a different rate, that I will either, bill -- because I got to be honest with you, guys, I'm not sure I saw the last time a rate went up. It's usually the disallowances that require us schools to pay back money, or to have our rate reduced, accordingly.

So, it's an oversimplification, that, just to look at the methodology, and think that's all we're worried about at any one given time.

It's the threat of reconciliation.

It's the threat of an audit year, because there's some of that that goes on, which means, if the comptroller comes in, and he says, "Let me look at your books," and he disallows all of these things, SED is going to have to go back and make a change in the rate for that year, which can be three or four years back.

So, there's lots of time issues, and time periods, that we're all working with, which, to the point, makes it practically an impossibility for anybody to manage current-year fundings, and even report on their financial statements what kind of exposure they may have in terms of givebacks.

So, you know, the methodology is just one part of it. You need look at the recon, and the audit possibility.

And, you know, the appeals, they're -- they once were a nice resource, to be able to have an individual school challenge. But, the parameters, the allowability of them, is: Are you unable to provide IEP services? Is there a threat to health and safety?

Those are not really large avenues for schools to pursue because they're very, very narrow.

And, so, to just say, I don't have enough money to do the things that I do, isn't reason enough for SED to be able to create a package that the Division of the Budget would look favorably upon.

SENATOR FLANAGAN: Pam, one comment that I would make, and I don't want to speak for my colleagues, but, the idea of an audit, because you characterized it, "the threat of an audit," I don't have a problem with that.

PAMELA MADERIOS: Oh, no, no. I don't have --

SENATOR FLANAGAN: I don't have any problem with the idea that there's an independent review.

PAMELA MADERIOS: No, no, absolutely.

But, that's another factor that goes into the, they have to reach back into their data banks, and go: Okay, for this audit year, I have to change the rate. And since the base rate has changed, then, for all intents and purposes, the methodology, as it applied to that now-deflated rate, is going to change as well, so that, they generally try to isolate it in one year, so that the pain is only felt for that audit year. But, they could apply the methodology of zero growth thereafter.

So, the base has been diminished, then, technically, all the subsequent years' rates have been diminished as well.

So, that's why it's -- we welcome audits too, because we think it's a teaching moment. But, it's just one of those additional factors that we need to be aware of.

SENATOR FLANAGAN: I'm sorry, Val. Go ahead.

VALERIE GREY: Yeah, I just, uhm -- I just wanted to add, reconciliation, that we -- we are supportive of removing the reconciliation. We proposed that this past year. And, I think that the OCFS rate-setting methodology doesn't include a reconciliation.

That's not to say -- because, I know, when my guys, when I first arrived at SED last year, when they mentioned to me, Well, we should think about removing that reconciliation step, my immediate reaction was, Well, of course we want to reconcile, because if, somehow, they didn't spend, or this rate -- but, apparently, it really doesn't make a significant difference, and there are ways to catch up later.

And OCFS doesn't include reconciliation, so, we would be supportive of doing something similar.

SENATOR FLANAGAN: Okay.

SENATOR LaVALLE: Let me make an observation.

I'm listening to everyone, and I'm going back in my memory bank, and it seems, even under the best of times, that the schools never liked the rate setting.

Was never enough. Wasn't quick enough. It was --

Is that a correct observation?

BILL WOLFF: Yeah, I think --

It's Bill Wolff from LaSalle.

I've been at LaSalle for about 25 years, and, I can remember one of the big milestones in the rate-setting changes was around the preschool

time.

And that, just -- you know, the -- with the initiation of preschools, I think it added the workload to the Department that was significant. We tried to squeeze the preschool methodology into the larger methodology.

There needed to be a methodology. There wasn't any question about it. But, a lot of things changed at that point. The feeling of responsiveness, and so on, just complicated things.

And, at the same time, I think a perspective that's important, I think, for this group, is, one of the things that's changed in our business over this kind of time, from the first evolution of the rate-setting system, is the velocity on our end; the velocity of children moving through our schools.

And without, "they come and they go," rolling admissions, and a youngster leaving and returning back to home, is not necessarily replaced by a youngster of similar characteristics.

So, literally, my lowest period of population in my school is in September. The end of August, September, I'm ramping up.

I'm not sure if it's going to ramp. We always watch, we kind of cross our fingers, we'll

see.

But, you know, there's a lot of volatility, and a great deal of velocity, unlike when this system was built, when we might have had youngsters come for, 18 months, 2 years, and things like that.

And, the system has tried to respond to that with some changes. The waiver -- you know, the opportunity for waivers and appeals. But, those were rare. And, now, they're almost the way to try to do business, to catch up.

So, we have -- we have a profile of kids leave us, we have a different profile come in, we need to shift our program around, and, maybe we've got different kinds of classrooms we need to open up.

To do that, we have to, generally, appeal, or do some process that changes things.

So, I think that's one of the factors that SED has really tried to deal with, and DOB.

And, it's been difficult; that, our business is shifting.

Particularly -- if we were stable, if I said, yeah, I've got -- yeah, we've got 100 kids in my school, pretty much year round, they're gonna be the

same faces. But, it's not what's happening to us anymore.

SENATOR FLANAGAN: Bill, can I ask you a question?

Just, can you describe -- this is probably a very lucid definition -- but, the typical kid that is in your school?

Is there any such thing as "a typical kid"?

BILL WOLFF: Well, I want to first say, that there's a real danger in saying "a typical kid" in an 853 school.

The 853 bandwidth is pretty significant, to, some of the most profoundly and medically involved kids in the state that, we probably, some of us can't imagine educating; to, kids who are over -- you know, kind of on the "troublemaker" end, if you will. They might be in juvenile justice for a while, and in foster care sides.

Not all kids in 853 schools meet the standards for educational with disabilities. Many of them are with us because of a juvenile justice placement or foster care placement, but they have characterized, generally, by a significant educational delays.

They're often undercredited and overaged as

adolescents, certainly. We see a lot of 14-, 15-, 16-year-old kids that can't read, but are bright, or have very few credits. Those kinds of things.

So, it's very hard to exactly characterize these kids.

What's common with them, what we're seeing now, is the effects of these kids of trauma in their lives, almost on the scale of -- well, really, accurately, on a scale of PSTD kinds of things of what they've grown up with. That's very characteristic.

But you can have, you know, these profoundly developmentally delayed kids in a program like Anderson.

And in my shop, we're mostly dealing with kids who are pretty high-functioning. Average IQ even higher.

I've got an AP course running this year, and then I've got kids who can't read. And, they're the same-age kids.

So, it's bizarre.

So, we don't all look alike, and that makes -- that's one of the dangers.

And I really have been pleased to hear SED be a little hesitant about this regional-rate thing,

because if we try to characterize these kids all alike, we're unwrapping the prescriptive kind of programming that is the specialties that the Special Acts and 853s are so good at: trying to meet the youngster where they are.

So, I -- I am -- I did get nervous about the regional rate. And I understand it would make life easy, but it wouldn't be good for kids.

SENATOR LaVALLE: Can I just go back?

Having been a classroom teacher, I wish we had a whiteboard or a blackboard, because I want to jump up and I want to create a timeline.

And, I would like your input.

I want to see, because I think Senator Flanagan opened the door. Right away, he said: I think it would be helpful to the Committee if we had in our mind what the process is; whether we need to move dates back.

Now, we're not involved in it, but, it's a -- it would be helpful -- and maybe you've already had this dialogue with the State Education Department, but it would be helpful for the Committee to understand, when should the process start?

Are we starting it too late?

BILL WOLFF: Well, there is a limitation on

the front end of giving us enough time to prepare our audited financials and submitting the CFR.

So, you know, we're already, basically, you know, the rates set -- the rates that were set for this year were based on the expenses of two years ago, that were then put back in.

So -- meaning, you can go back, and then you just keep -- eventually, you're gonna push back onto us, and say: How soon can you get your audited financials into the State so they can begin the process?

And you can't go back much further.

I think they're due now, October 1st? And, almost all of us get an extension to, November 1st?

Am I right?

MARY KOGELMANN: Till December 1st.

VALERIE GREY: Yeah.

BILL WOLFF: Or, it's the other way around.

So, that's hard to do.

SENATOR LaVALLE: This is an opportunity to build -- to let us know what should be happening.

You're -- you've tied your hands. You got to think outside the box.

Don't tell us two years -- goes back two years.

Should it go back two years?

BILL WOLFF: Well, I think -- I think it has to be based someplace on some historical clock that's fair.

How are we gonna government money without being account for?

SENATOR LaVALLE: Well, what is it?

RICHARD LASKY: Senator --

SENATOR LaVALLE: Yeah?

RICHARD LASKY: -- my name is Dick Lasky. I'm with the 853 Coalition. And, many years ago, I was a rate-setter for the Office of Children and Family Services.

The fiscal period that is chosen is based on a July-June fiscal period that links to the school.

SENATOR LaVALLE: Right.

RICHARD LASKY: The earliest you can get a financial statement certified by the public accounting firms, is sometime between August and November. So, the earliest that the state agencies can get a document that's reliable, from their perspective, is sometime in November, that document, that is used to set the next June rate.

Historically, a way to get around the problem of delayed rates, is move up the dates of when

the state agencies have to submit their proposals to the DOB, so that the -- rather than April 15th be the date of submission to DOB, April 15th be the answer back to the state agencies on what the acceptable changes to the rates will be, which then gives the agency a 45-day window to issue rates on June -- and -- in the month of June that are effective July 1st, with the beginning of the school year.

SENATOR MARCELLINO: Dick, can I ask a really dumb question?

Why is DOB involved in it at all?

RICHARD LASKY: They wrote themselves into law.

UNIDENTIFIED SPEAKER: We don't know.

SENATOR MARCELLINO: You get -- "We don't know" is a good answer.

You get money. I understand the allocation of the budget process. They get -- you get a certain allocation to State Education, you get a certain allocation to every department and agency in the state.

DOB is intimately involved in determining what your budget, overall budget, is going to be.

Now, why are they involved in how you spend

individual parts, so minutely?

I can understand them being involved in the budget process, and creating it, but why do they have to set the rate? Why do they have to approve the rate?

Why can't do you that alone, with the school, in determination, I guess, spending a set amount of money?

You're not growing it, because you have no right to grow it. You live within a budget.

So, once you're within that budget, what do we need them for?

I'm just asking.

PAMELA MADERIOS: Yeah, I --

SENATOR FLANAGAN: That was a rhetorical question.

PAMELA MADERIOS: Yeah.

[Laughter.]

PAMELA MADERIOS: Actually, it's not rhetorical, though.

SENATOR MARCELLINO: No, it was a rhetorical.

Because, it seems to me, everything goes back to the Department of Budget determining rates.

And, what is their expertise in determining the rates, other than their accountants?

PAMELA MADERIOS: Right, but the statute requires that the rate be certified by DOB. So, it's a statutory obligation.

SENATOR MARCELLINO: Why not the comptroller?

PAMELA MADERIOS: Well, by the comptroller -- well, no, because, it says "As Certified By." It doesn't say the State Comptroller, I don't think. My recollection is, that it actually says the "Division of the Budget."

SENATOR MARCELLINO: Doesn't the comptroller have approve every check written?

PAMELA MADERIOS: I don't --

VALERIE GREY: There's general certifications, and then there's an OSC approval process, but it's not usually at this microlevel.

PAMELA MADERIOS: And it's also important, that, our reimbursement is not tied to that current-year state budget.

That's why we're -- when they get a million dollars for this -- SED's budget, that isn't -- it doesn't include our -- the payment for our current-year rates. That's almost as if to pay back them, and to make resources and funds available to them, but we're not tied to the budget line, because of the reconciliation process.

And, when they are generating prospective rates, that would be my current-year rate.

And, so, that's why -- our -- the methodology isn't tied to the budget, where most other state agencies, I think, are tied to that current-year state agency's state budget.

But, for our methodology, that's not where our funds are coming from.

MARY KOGELMANN: We reimburse on a lag.

PAMELA MADERIOS: On a (inaudible) lag.

MARY KOGELMANN: Remember, the providers and schools are billing the school districts and counties in the first instance. They bill the school districts for school aid, the counties for the preschool.

And, then, they submit information back to SED, asking for reimbursement. But, the way we reimburse, based on the budget and the appropriations, we're reimbursing on a lag basis.

SENATOR MARCELLINO: That's not the only lag reimbursement process that exists in State Ed.

MARY KOGELMANN: Correct.

SENATOR MARCELLINO: The instruction is generally --

MARY KOGELMANN: Correct, but if we --

SENATOR MARCELLINO: -- lagging as well.

MARY KOGELMANN: -- right, if we set the rates without DOB, then we would almost be dictating the appropriation they need to build into the budget in the following year, for reimbursing the counties and the school districts.

So, if we just did it on our own, and said, okay, whatever, 3 percent growth, and we built that in, then, in order to make sure that there's enough funding to reimburse the counties and school districts, DOB would have to take that into consideration in setting the appropriation. Or, if they just set it level, it would just mean school districts and counties are going to wait another year to get reimbursed.

It would even -- it would put it even on a further lag because the appropriation wouldn't be sufficient.

So, it's all tied together.

SENATOR MARCELLINO: Doesn't that happen if they say zero growth?

MARY KOGELMANN: If there's zero growth, then, technically, they're --

SENATOR MARCELLINO: The scenario you just mentioned is zero growth. Three years they're

telling you, you can't increase anything.

MARY KOGELMANN: Correct, so that we --

SENATOR MARCELLINO: So, that's basically what you're talking about.

MARY KOGELMANN: Correct. So that means the appropriation DOB would have to put in the budget to reimburse is lower than it would have been if you had -- if they had provided growth.

PAMELA MADERIOS: And it's not systems zero growth, it's individual tuition zero growth.

So, I will get the same tuition, but, I'm multiplying by the number of kids, so -- because it's a per-child tuition.

And so, therefore, I might have had 20 kids last year, but this year I have 30; so, therefore, I'm going to spend more, and the State will owe me more, but I haven't been able to spend more per child. I might spend more in the aggregate because I have more kids, but not on a per-pupil-tuition basis, which is what we have.

BILL WOLFF: Just an observation, if I can, too, on this, with the budget.

It's difficult sometimes, as the rates are, from a provider perspective.

One very good thing about it, from a small

non-profit business, is that these are certified by the State of New York, and valid to all of my payers.

They -- they believe that my costs meet a fiduciary standard and responsibility, and there's no negotiations then about paying them.

We don't have -- I don't know how our businesses -- some think they can, but I don't know about that -- are able to successfully manage sort of a free market, where we would want to charge whatever we wanted. And, that could turn into a very interesting situation otherwise.

So, I like the idea, one of the successes of the rates, and the other rate system, is, in fact, that once it's agreed upon, it's a solid deal. It's a deal with the provider, with the placing authority who sends a youngster to me, that I expect to be paid that.

Now, we'd like some more negotiations about how that is set, but I contract with, I don't know how many school districts -- I'm one of the smaller -- but, 35, 40 counties, and all kinds of things, entering into private negotiations with all of those folks about, whether my costs are valid, and whether they were determined accurately,

is -- would be an immense cost, and waste of time, generally. And I'd much prefer something that's, once it's certified, it's good to go.

SENATOR FLANAGAN: Dick, can I go back to the scenario you described? I want to see if I'm following your logic, because it ties in, somewhat, to what Senator Marcellino was talking about.

If you -- you get your certified financial statements. By following you correctly, you've got, the school year goes, you know, and then you have that period of August to November.

Arguably, you'll get that data for appropriate to -- submission to the State, the earliest would be November.

RICHARD LASKY: Uh-huh.

UNIDENTIFIED SPEAKER: Right.

SENATOR FLANAGAN: And there's hundreds of applications that they have to review.

So, when SED sends over their information to DOB, on April 15th, that's more tied to the methodology, as opposed to an individual tuition rate for any one of your schools?

RICHARD LASKY: Correct.

SENATOR FLANAGAN: Okay.

How would you suggest speeding up that part

of the process?

Now, I know Val clearly referenced, on a couple occasions, the labor-intensive aspect of that.

And, from an outside perspective, looking in, do you think there are not enough people in the SED tasked with this work?

I mean, it could be a staffing issue.

But, do you -- how would you suggest improving the timeliness? -- because everyone has sort of alluded to, or spoken directly to --

RICHARD LASKY: Well, one of the steps that was discussed earlier was that, the cost increase of zero COLA increase requests, how the methodologies going to work, gets to DOB on April 15th, and then they have a certain period of time.

Those decisions can be made earlier. You can do that in January. There's to reason to wait, other than the statute that says April 15th.

You -- it all depends on what proxies you're going to use, for either increasing it, or inflating the cost, or how you're going to change your policies.

Certain things aren't going to change. The way you treat new programs, that's going to be

static from year to year.

So, the only basic thing you're negotiating is the cost-of-living allowance that you may be allowing for the costs that you're going to be applicable, are applying that methodology.

The rate-setting unit folks can still process the papers, and get those into whatever computer process they have to be, so when that ultimate decision comes back about what the inflationary factors are, that just gets plugged into the system.

SENATOR FLANAGAN: I'm going to follow up, and use a phrase that Senator Marcellino said. I'm probably asking a dumb question, but, I'm going ask it anyway.

RICHARD LASKY: There's no dumb questions.

SENATOR FLANAGAN: If you are -- if you're making the reference to the clerical inflationary factor, and everyone -- not everyone, but people have spoken to the concept of the COLA, the way I'm interpreting that is, it doesn't seem like there's any detailed recognition of the cost of a given program or a given school, for factors, like, the acuity of the individual circumstances of new kids (inaudible).

You take a kid that has one learning disability, versus twelve learning disabilities, or complications --

MARK SILVERSTEIN: That's correct.

SENATOR FLANAGAN: -- is that --

RICHARD LASKY: That's correct.

MARK SILVERSTEIN: That's correct.

That's point on.

ELLEN BERGMAN: That's right.

MARK SILVERSTEIN: That's right.

RICHARD LASKY: It's only looking at costs.

ELLEN BERGMAN: And, in fact, as Special Act districts, because we're public, we follow the model of public school districts. So, we start building a budget in January, anticipating costs, in term of class size and therapies and faculty. And, we have to approve our budget.

My board approves our budget in May, but, frankly, we don't get our rate until the following November.

So, if we could back it up, even to match the public school model, so that we have a prospective -- you know, we submit all our budgets to SED in February or March, like we do in a public school, and you look at our projected costs

compared to our past costs, and build the rate that way.

SENATOR FLANAGAN: I want to just go back, because I think I'm following you, but I'm not sure.

If you have -- and I'm making a very general description.

You have ten kids. Five of them have two complicated factors. The other five have seven.

Is it accurate to say that you're getting a tuition rate set on the fact that you have ten kids --

ELLEN BERGMAN: Yes.

SENATOR FLANAGAN: -- not five kids?

ELLEN BERGMAN: That's it.

SENATOR MARCELLINO: Yes.

ELLEN BERGMAN: That's right.

And there is no mechanism for that extraordinarily expensive student. You have, somehow, absorb the costs, and then appeal the rate, and hope that, in reconciliation, those costs aren't excluded, which --

You're right.

-- nine times out of ten, they are.

PAMELA MADERIOS: (inaudible), when the whole

methodology was designed, it presumed a high-, medium-, and low-profile of kid; one with very little needs, one with very complicated needs.

But with the change and the redirection back into district of a lot of these kids, what our schools now are enrolling are the high kids.

So, our base was established 100 years ago, based on, you know, a mix that doesn't exist anymore. And, so, even if our costs could increase slightly with a COLA or a trend factor, it's no longer reflective of this student population.

So, we don't have that case mix anymore. It's just -- it's all intense, because all the low or medium ones are now back in district.

And there hasn't been any anything in the methodology to reflect that or to accommodate it.

And, I think that that's another part, the timeliness of the methodology, but, it's insensitivity to the complexion of the kids that we're serving.

SENATOR FLANAGAN: Okay.

VALERIE GREY: Could I just quickly go back to timeliness?

SENATOR FLANAGAN: Sure.

VALERIE GREY: So, I had a couple of observations, and then a couple of questions.

In terms of SED, I mean, bandwidth is an issue.

Just generally speaking, we have over 400 fewer people than we did just two years ago. So, it has an impact.

That being said, I think that the general methodology proposal that goes over to DOB could be done earlier.

I guess my question is: The laws that we're referencing, and the April 15th, and the DOB approval, also exist for the OCFS rates.

And, I'm curious if anyone is in that system, and whether the delays are similar, or not?

UNIDENTIFIED SPEAKER: No.

VALERIE GREY: That's something I guess I should --

JESSICA MORELLI: Hi, I'm Jessica Morelli, from NYSEC. I represent the counties --

SENATOR MARCELLINO: I'm sorry, I couldn't hear you.

JESSICA MORELLI: I'm Jessica Morelli, from NYSEC. We represent the counties who pay for, you know, not only preschool special ed, but we are in

the OCFS system as well, for many social services, children and family services programs, such as childcare.

And, the experience from counties with OCFS and rate methodology, for daycare especially, has been -- and I'm going be very careful how I choose my words here -- concerning.

The methodology lends itself to retroactive rate increases, which many counties received, two years ago, a five-year retroactive rate increase, to the tune of $69 million, per year. And that was because someone retired from the rate-setting unit, and it went unnoticed, or undocumented, or whatever the reason was.

And, there were a lot of extenuating circumstances, but I wouldn't say that that's a model that counties would be supportive of.

And I don't want to turn the conversation to our position on preschool special education, but I think I should let you know, the county -- we don't get involved, obviously, in the rate setting, unless, you know, for very specific reasons, obviously, SED -- but, we -- the NYSEC and the counties' longstanding position on preschool special education, is that we should be removed from the

fiscal programmatic and administrative duties of it.

We like to tell, when I go to do presentations for local elected officials, I ask them to raise their hand if they live in a county with a department of education, which they can't do, because there are no county departments of education.

Counties are involved in preschool special education because of a quirky little thing that happened with the Family Court Act in the late '70s, early '80s, where it switched the fiscal responsibility to the counties.

So, we really have no role in preschool special education, counties, other than to bankroll 40.5 percent of it.

With the 2 percent property-tax cap, I can tell you that this is going to be extremely problematic in the coming years. And, we've offered a five-year takeover, we've offered a ten-year takeover, of the preschool special ed program.

The school districts set the services. They determine what level of services children will get.

Counties have a very small role on the committee on preschool special ed. But, ultimately,

the committee decides, without. They do not need, by statute, they -- the role of the county person, to determine what services will be included for the child.

So, we would like to be removed from the program altogether.

And, I did bring a copy of the 2007 Governor's report on preschool special education, which is very informative.

None of the recommendations have been incorporated yet, but, it was done by consensus, through providers, through counties, and through State, through the Division of the Budget.

And I encourage everyone to go back to those, if you're looking to think out of the box and start from the beginning.

One of the recommendations was, to remove the counties.

And, I also brought one of our reports on the nine programs driving 90 percent of the property-tax levy in the state. I know that that's a hot topic right now.

And, preschool special education, the 4410 program, is one of those programs.

And, just for a reference: In 2010, it cost

counties $420 million, just the preschool special ed program.

New York State spends about $10,200 per student on preschool special ed. Other states, about twenty-five other states who responded to a State survey, New York State-issued survey, they spend about $6,000 per child for preschool special ed.

So, sorry, that was a long answer to your OCFS-methodology question, but, that's probably all I'll say.

That's the big picture of preschool special ed, from the county perspective. We don't have too much with rate setting, but, again, I thought it was important that I come and present the county perspective on this, because we're sort of the elephant in the room, because we pay for the program, but it's really not -- not something we should be involved in.

RICHARD LASKY: Just a point of information: I think Ms. Grey was talking about the OCFS as it related to the residential component of the agency, versus the daycare component.

There are two different -- OCFS uses two different methodologies in each of those areas.

Close OCFS methodology related to the residential component of these schools is timely. It's always, in a sense, they get the same COLAs at the cost-of-living allowance increases, but they have standards within their process which are different -- established differently than SED.

So, there's no need to go back to the Division of Budget. Once the cost-of-living allowance is agreed, the methodology just flows, and it's out there, because there's no reason to go back to DOB with individual agency rates and appeals. It's just not there.

PAMELA MADERIOS: And if I could --

Do you want to talk?

UNIDENTIFIED SPEAKER: Go ahead.

PAMELA MADERIOS: Okay. Sorry.

In Jessie's point about, there's several task forces that have been, you know, convened over the -- for every year.

I think, maybe 15 years ago, Tom Hamill brought one together, and that's when we all got together the first time. And there was a set of recommendations that were advanced.

Actually, none of which I think stuck.

And then, most recently, Spitzer had a

Governor's task force on special education rate reform. And, again, it was primarily on the preschool side because of the county interests.

But, there's been a lot of recommendations that have been floating over the year.

One was to separate the school-age methodology from the preschool methodology. And, there was upsides and downsides with that, that that would address the preschool problems, recognizing that the school-age population, the school-age concerns and dynamics, are a vastly different than the preschool dynamics.

So, that has been recommendation that's advanced.

There was a couple of pieces of a legislation that we all are trying to press a couple of years ago, around: Give us a three-year rate that's based upon a rebasing of our current rate, with experienced data.

I get it for three years; I live with it for three years, I die with it for three years.

Perhaps you could give me the allowance of a fund balance, like our school district colleagues have.

And, so, there's -- there's lots of

recommendations that we have, that have been advanced. And each one has, you know, some value and some merit, all recognizing that, a three-year -- three-year-old rate, I can do what I do within those three years. I have the consistency of being able to budget for those three years, and know what costs I can absorb, and what I can't. And, then, reconciliation at the end of three years.

That goes to your timeliness issue. It takes SED out of the equation.

Three years in a cycle. And you could start those cycles at different staggered times so that they're not having to deal with one, you know, reconciliation of the, 700, 800 different rates, or whatever.

So, you could stagger those (inaudible) times.

SENATOR FLANAGAN: Doug, I'd like to hear you from as well.

But, on the question that I was raising, and this may tie into SED as well, the timeliness, obviously, people keep referring to that. But, it would seem to me, that, from your perspective, is there any regulatory or statutory authority for SED,

and commensurate with the DOB, to look, and say: All right, we are going to now, essentially, look at each child, and look at the extent of their individual circumstances, and reflecting costs?

Am I making sense?

DOUG BAILEY: Well, they -- there is authority to do that because the statute establishes that SED and DOB set the rate process. So, they -- that's what the statute gives them the authority to do.

The key to this whole thing becomes, if you think of 853 schools, 853 schools serve two different components, really.

They serve kids placed by school districts. Those kids are IEP-driven. So, they're individual services that are driving the needs of each child, so that the rates, to a great degree, being with an individual child sort of reflected that.

That's -- basically, that's the history of it. It really was driven by the federal law, way back to, it was the Education of the Handicapped Act before it became the IDA.

And, subsequent, I mean, there's nothing, also, that would prevent them from looking at, how do you set the ratios at schools, how they serve

kids.

Right now, class ratios are established based on public school structures. You could restructure the schools in such a way as to give them a lot more flexibility across the different -- you know, if -- with the rolling admissions that Bill talked about, kids in and out, classes change.

There are ways to do that where you could restructure the whole process.

I think the message that I heard when I was listening to a lot of this -- and my background is primarily the program side of things -- so, what hit me was, the question -- the original question you asked, was: With moving the dates up, to get the cost indications, and everything, set, would that help?

That would help. I don't think there's any question, people said you could do it, but it wouldn't solve the problem.

The problem is: The rates are too complicated. They take way too long to do it. And, the staff; there's not enough staff to handle it.

Dick -- I always -- Dick was, actually, he was very generous to himself -- kind to himself by saying he was just a rate-setter. He was the head

of rate-setting.

The MSAR system that OCFS established, which is not daycare, it's residential school stuff, he set that. He'd been working with State Ed along the lines for a while, to try to reestablish how you might use it within the context of the State Ed system, and replace the current structure, because, if you look at what goes on -- there's multiple rates, and reconciliations, there's appeals -- there's not enough staff to handle all of that.

There's just not going to be, either. It was set up to handle only the school-aid stuff. And now it's handling preschool, and everything else.

There's no way that Val's staff is going to be able to handle that. And they work very hard. It's not about them. They're very, very good. They work hard.

There's no way it can happen, though. It's just not going happen. Way too much work, way too many steps, way too many different schools to be involved.

So, simplifying the process, similar to what the MSAR does.

Or, Pam said -- Pam talked a little bit about a three-year process. Pretty good idea, too.

There are options to change that, but just moving dates up isn't going to solve the problem.

SENATOR MARCELLINO: So what I'm hearing, so far I've heard two things that somewhat interest me.

One -- well, three things.

One: State Ed is in a problem of a staffing crunch, because they're getting squeezed by budget costs, and everybody's getting cutbacks. So, they're losing people.

So, it's to their benefit to figure out a simplified system that might work.

You're talking about a three-year rate system that you think you could live with.

It would have to be evaluated every three years. Perhaps, increase, whatever. Maybe exceptions to that would come in.

Then you talked about a regional rate that might be established.

Within that three? I don't know.

I'm hearing suggestions that might work, but what I'm seeing is, that you don't have the bodies.

In the near future, you're not going to get them. That's the reality of it.

So -- and they've got to live within a

2 percent cap, as do all the schools and their budgets, so, it's going to be a problem.

See, it behooves us to simplify the system, in some way, shape, or form, that makes it move faster and more timely, and cuts out some of the stuff.

Hence, that's what I, strongly, with this business about: Why do we need to keep going back to the DOB? Keep going back to... (indicating.)

See, there's so much back-and-forth.

I mean, as far as I'm concerned, you guys are geniuses. I don't know how you function at all with the complexity of the system. It's next to impossible to follow this without, you know, 17 hands and 4 arms.

I don't know what you do.

MARK SILVERSTEIN: And the short-term solution, if I may -- just a guy with an idea -- if, as -- as a special ed public school district, and a public school, again, if I can walk away, knowing that I'm subject to the same tax-cap formula, and walk away with 2 percent, I'm going to shake everyone's hand, and it expedites the number of issues that don't have to be dealt with.

As stated, the previous rates that were given

to Special Act school districts prior to the zeros, are lower than contingency budgets in every New York State school district.

So, we are an example of fiscal efficiency, but now we're at the point where survival comes in.

The other part is, that our agency counterparts -- and, I think Senator Flanagan raised a good point -- the agency counterpart for the OCF, they get a hard-to-place rate for that child, because they know the services for that child is such, that it goes beyond the norm.

In our settings, there is no such thing in SED for a hard-to-place rate.

So, it really speaks to, on one side of the town, that's acknowledged; but, on this side of the town, there's one fee, and that's it.

So, if three kids come in needing "OP," "PT" -- physical therapy, occupational therapy -- I'm done.

ELLEN BERGMAN: You have to eliminate a teacher.

MARK SILVERSTEIN: I eliminate the teacher, or teacher aides, or a guidance counselor, and not keeping in mind that there's staffing standards now.

So, this is a hell of a cake we're trying to bake.

SENATOR FLANAGAN: Can I -- I listened carefully, as I think everyone did, to Jessica's comments on -- from the county perspective, but, going back:

Doug, you -- I know Dick (inaudible) more briefly -- but, on the MSAR that you referred to at OCFS, one of the things I said in the beginning was: Can we come up with some legitimate solutions, things that are worthy of, maybe, more intense discussion, and some things that could be possibly in an executive budget proposal, or a budget that we ultimately enact?

What is your assessment of the OCFS model as something, akin to Val's question, that could be used?

Is it -- is it much more palatable?

Is it only address a small part of the problem?

DOUG BAILEY: My sense is, yeah.

MSAR, the way I've heard providers talk about it for years, it's a much more simple system. Like it said, you don't have to go back to DOB.

It, in fact, forms a skeleton of a system that you could start to be cut, to create, that would fit the education model.

There's a couple of issues around it. You know, utilization issues, and how you look at the way schools are structured, and that kind of thing, because OCFS uses, these are the certain number of beds you have; whereas, in the education model, it would be a little bit different.

But, there are methods to work that out. There are ways people have already talked about to make it -- to have that work.

SENATOR FLANAGAN: Sure.

LEE LOUNSBURY: And I just want to echo that as well, Doug.

I mean, the 853 Coalition supports adopting some sort of an OCFS-MSAR-type model.

Senator LaValle, I was intrigued about your idea about taking a whiteboard and trying to graph out the curve process.

I'm only two years into the 853 work. My background is OCFS.

If we tried that, first of all, I think we'd probably all throw up our hands, and we would have a picture that looks like a spiderweb, at best.

We have schools that are dealing with multiple years of appeals -- we heard a little bit about that earlier -- and are, hundreds, and even millions of dollars in debt, that they've had to borrow. The interest, of course, is never reimbursed.

Schools that have closed. Schools that are in very precarious financial circumstances.

And, these issues, along with a zero growth, have a real impact on program delivery and safety -- and health and safety issues with kids.

We're hoping some of our providers will speak to that. We have Ray Schimmer here from Parsons (inaudible).

The zero-growth issue is huge for our folks, but we don't have to reinvent the wheel. OCFS has an MSAR system. There's, certainly, we have to do a little work with it, but it's doable. I think it just takes, will, and a commitment, to make it happen.

SENATOR FLANAGAN: Lee, let me follow up -- I'm sorry, go ahead.

SENATOR LaVALLE: My point with the whiteboard would have been proven, that there was such a morass there, that you need to create

something more simple.

And, you know, I challenged everyone to -- and, no one -- we've gone around, you know, all sorts of ways, so that, the one thing that I think we've come out of this with, is that the process is too complex, and we need to simplify it, so it makes some sense.

And that's what I'm coming away from all of this.

DOUG BAILEY: Senator, the one thing that I think has -- I'm hearing things from other people all the time around this. And, there is a pretty deep consensus, that, if you took the MSAR, and you modified it, it would work.

BILL WOLFF: Yeah, and we're -- you know --

SENATOR LaVALLE: Is there a consensus on this?

DOUG BAILEY: I believe there is.

UNIDENTIFIED SPEAKER: Based on the 853 --

BILL WOLFF: There's a lot of folks, yeah.

State aid, for example, really, working with DOB, and then with the providers, took one of the key steps in the last few years to help to build a basis for this, which is the staffing standards. They've looked at -- there's a correlation between

the MSAR system and its analysis of beds and ratios for safety and supervision, that relates, and that's a core element of that rate-development system.

How -- if you will: How challenging are the kids? And, how many staff in your configuration of where the kids sleep and live, and otherwise, in residence, what's that makeup? What's the standard for that that everybody's acceptable?

We've done the same thing.

Rather than simply be guided by an IEP, which can be -- and I think that Doug's point is something we really need to peel back -- the IEP is driven, you know, it anticipates a public school environment.

And even for the Special Act schools, to public -- our environment's different. We've changed that environment, and it has a big impact on the youngsters when they come with us.

If we could figure out how to get some relief from that rigidity, these staffing standards form the basis of one of the key elements of a rate-setting system, that allows for some notion of what's the right number of people that are needed here.

That's always been a very difficult, fuzzy area. And, I think that's an area where DOB has felt like they needed to really exercise some oversight.

SENATOR LaVALLE: If we -- if we now have agreement on a system that you would like, how much more costly will that be?

Because, as I said to Senator Flanagan, we start the process with how much money is on the table, and then we kind of back into, you know, where we're going to go.

So --

BILL WOLFF: Yeah, let me say something about that.

I have 25 percent fewer youngsters living on my campus than I did ten years ago, because this whole system is shrinking. We're working very hard to try to reduce the numbers of children in this very high level of care.

We're not talking about a system that's growing, growing, growing. We're really working very hard to reduce the numbers of kids, in quantity, and also the lengths of stay.

And I'm not convinced -- and I've talked about this a lot of times, and our good colleague,

Ray Schimmer -- we're very conscious about trying to price ourselves out of business.

We don't want -- the first thing we're here -- and you leaned over also -- we're not -- the first thing is, you haven't heard us say, "We need more money."

We were in New York City, with Chancellor Tisch, and she said: What's the thing you guys need the most?

And one of the answers was: We need to be paid fairly for what we're asked to do, and we need to be paid on time.

We didn't start by saying: We need 20 percent more money.

But what we do, we wait so long, sometimes, to be paid for -- not for big excesses.

I mean, Ray wrote a letter that was great on this, and said: Look, when we go to our budget, we're not cutting the -- we're not cutting the sports program, or the -- you know, the field trips all over the place, or the -- or the elective languages, and things, that public schools are looking at when they're saying, We've got to roll back.

We don't have those things. We're basically

driven by State standards of what is necessary.

So, it doesn't take us long before we've -- you know, we've really have met some efficiency standards.

So, we're not lining up here, to say, you know, I'm not going to tell: LaSalle, that, I got to have 25 percent increase in my rate to operate.

I just have to keep up with the people so I don't lose them. So they don't look at me and say: I've gone two years without a raise.

I'm not talking about step. I'm talking about making the same money in 2010 that they were making in 2008.

Not, oh, well, instead of COLA and step, nope, no, zeroes.

That's the impact of this kind of stuff.

So -- we don't -- we could fix that if we have some of this; if we're paid timely, and we can understand what it was, and we can build our budgets based on that.

VALERIE GREY: Senator LaValle, I just, again, you know, we have taken a look at the OCFS model. There are definitely, some advantages, some challenges.

But, to your question: The last

three years, the SED providers received zero percent growth.

In '09-'10, OCFS, with the model that they use, provided 3.8 percent trend.

In 2010-'11 the trend was 3 percent.

I think, this year, I believe it was zero percent, but, that model did drive, and the DOB authorized, a higher percentage growth than what was done in our system.

BILL WOLFF: And just for clarification, that's a -- Ms. Grey, that's a two-year trend; right? A trend of two years?

VALERIE GREY: Yes.

SENATOR FLANAGAN: Lee, can I go back to something you said?

Speaking to your background, do you believe that there are discussions -- forget today, for the moment -- that there are discussions in earnest about some of the things that you talked about?

Senator LaValle asked, and Doug spoke very clearly, that there seems to be a consensus on moving to a certain type of model.

Bill, you just talked about, speaking, or listening, to Chancellor Tisch.

One of the things that I find frustrating

about working in Albany, and I'm sure everybody feels the same way, is: It's always like, well, "they" said.

What I -- what I like to do is, put all of "they" in a room, and then have everyone say what they think, and see if there's some positive movement forward.

Are you -- do you feel that there's none of that taking place the way it should?

LEE LOUNSBURY: Well --

SENATOR FLANAGAN: Or do you think it is taking place?

LEE LOUNSBURY: -- let me personally thank you for putting all of the "theys" in the room. I think that's really important.

I certainly am not privy to internal discussions at, SED, DOB. I wouldn't be able to answer that.

From sitting on the outside, looking in, no, I've not seen movement in the direction that we're talking about today.

SENATOR FLANAGAN: Dick, how about you?

RICHARD LASKY: There's been attempts, but they've never come to fruition, ever, (inaudible).

SENATOR FLANAGAN: Do you think there's any

responsibility from legislative involvement?

You know, I mean, if we're doing something like this, we obviously care about it, and want to try and see something positive happen.

But, where -- without, like, throwing people under the bus, so to speak, where do you think the problem is?

Is it just not having serious negotiations? Or, just, it starts, and then it stops, and ends in a report?

Mark.

MARK SILVERSTEIN: If I may, and, again, without throwing people under the bus: We've met with Commissioner Steiner. We've met with Commissioner King. We go to end task force. We've met with the chancellor.

One meeting we go to, all due respect, though, they say, it's administrative.

Then the next meeting we go to, it's legislative.

So, if we're a little dizzy right now, you would understand why.

I think the involvement of the legislature is essential, and will drive what needs to be -- what is an antiquated system into the

twenty-first century, and to help provide the children the services they need, simply put.

VALERIE GREY: I've been behaving, and I'll try to continue to behave, but, I guess, you know, I think that everyone is interested in putting together what is the best, most reasonable rate, so that the kids can get served.

MARK SILVERSTEIN: Correct.

VALERIE GREY: But, I would be remiss not to point out, that, the parameters that I have to live within, in terms of budgetary issues, I -- there's no point in going through, taking the few people I have left at the agency, and have them examine the OCFS model, which, as you could tell from my remarks and my planted question, I think there's a lot of value there.

But, to have the people I have left at the agency put all their effort into, constructing, and looking at, what is the right model with the OCFS base, only to be told that there is no growth in the system allowed, I think we need to -- that would put us all even further behind, because, if we got nowhere, then your rates would be, under the old system, backlogged even further, and the appeals would be backlogged even further.

So, I sort of feel like there is a fundamental question that we're all going to have to get to, at some point, which is, you know: What is the right allocation of funding for the programs, generally?

If I know that there's some room that I have to work with, then I'm happy to roll up my sleeves. But, if I have no room, in terms of what's budgeted for the schools, then I --

SENATOR FLANAGAN: Do you have an answer to that question?

VALERIE GREY: Do I have an answer?

[Laughter.]

SENATOR FLANAGAN: Let me ask something that I hope is related.

One of the challenges we have as legislators, and all of you providing services, is: How do you do it in the most, hopefully, cost-efficient manner?

And, when budgets are tight, no matter what level of government you're talking about, how do you find ways to, potentially, give people an opportunity to save money, without necessarily giving them more money?

I'm not trying to do that on the cheap, but,

I don't think we really talked about: Are there aspects to the system that are ridiculously onerous, that don't provide any added value to the education of any one of your students?

You know, are there, just, burdensome bureaucratic things that add time and money to the entire process, that bear no fruit?

VALERIE GREY: Or even if -- if providers can identify savings and they do reduce costs, being able to just keep a little bit of that to reinvest in programs.

(Several comments made by several participants.)

VALERIE GREY: You know, not all of it, because we know we have to, you know, keep cutting, keep cutting.

But, you know, to incentivize that behavior, especially on the admin side; because, right now, the way it works, there's a -- I think, no more than 30 percent of your overall spend can be for admin; right?

So, if you find ways to cut some costs, and we all know there's creative accounting -- it's all legit, but it still can be creative -- but, if you can find ways to cut there, in some ways, you're

silly to show it, because you've got to -- you want to hit your 30 percent.

But, if you were allowed to show it, and you could keep a little bit of it, to maybe offset some of the challenges on the programmatic side, you know, that's a possibility too.

But, there's lots of, I think, ideas. I think, just, the overall parameters get challenged.

SENATOR FLANAGAN: Jim, you've been remarkably quiet. Go ahead.

JAMES DeLORENZO: Yeah, I just want to add: One challenge that the system entered into several years ago, was, kind of shoehorning the preschool system into what was really established as a school-age system.

And, trying to establish a universal remedy to this, for two systems that are very disparate, I think would lead us into more complications in trying to come up with something that would work across the board, because, preschool programs, the preschool system, the way they operate, the variety of interventions that you have in preschool, is not -- does not correlate with well with the school-age system; yet, we have the same methodology

across the whole special education spectrum.

And, when you try to then remedy this with one answer, you're going to not -- you're not going to remedy the whole system well.

So, I would just added that caveat.

I think the folks that work in the preschool system -- you know, you've heard a lot from the school-age providers today, and they've articulated very well, their issues. But, I think if you heard from many of the preschool providers, and Pam certainly could speak for them, you'll find that there's unique issues, not only for our -- the Department's ability to deal with the myriad number of small preschool programs that are trying to operate, and the individual service providers, it's very different than what you have in the school-age system.

And trying -- again, trying to remedy that with one methodology, or one response, I think will lead us in the wrong direction.

JESSICA MORELLI: Transportation is a big issue for preschool special ed, for the counties. About 20 percent of the cost of the counties' share of preschool special education is just for transportation.

I think there's one county in the state that is able to contract with their school district to provide transportation. Everything else is coordinated through private providers.

RFPs, the cost is through the roof.

SENATOR FLANAGAN: How do you fix it?

JESSICA MORELLI: Well, we had a bill. It's S5175 (Gallivan), that would require parents to sign an affidavit, saying that they were unable to transport their children.

Transportation would still be provided if they couldn't, but, that they would be required to say, you know, I can't, do it because: I don't have a driver's license. I have a disability, mental, physical.

And, they would also -- if they did choose to transport their children, they would be reimbursed.

That exists now. It's, just, that parents don't take advantage of that.

SENATOR FLANAGAN: The reimbursement --

JESSICA MORELLI: Correct.

SENATOR FLANAGAN: -- for the parents, exists now?

JESSICA MORELLI: Yes, it does.

PAMELA MADERIOS: And, if I could?

And, I think to Jim's point, and I had mentioned it before, we really do have to treat preschool entirely different than school-age, for a number of reasons, not the least of which is, fluctuations in enrollment, which makes the methodology really inflexible.

There's more of a consistency, presumably, in the school-age population, around, I generally get in the neighborhood of 80 kids a year. Maybe 78, maybe 82, but there's much more consistency, where the fluctuations in enrollment in the preschool is much more dramatic and much more pronounced.

So, the methodology that would be applied to the school-age programs, especially using the OCFS model, it says: We are presuming you're going to occupy your beds at 98 percent. And, we come up with that number, based upon experience, or whatever.

We can't use that same kind of number, necessarily, in preschool because of the fluctuations. But...

J. BRAD HERMAN: While I would recognize the lady's considerations relative to utilization, the transiency of residential populations today is at warp speed.

I have a school that has a license capacity of 200. I serve 350 kids a year.

That also has vast implications, obviously, on the residential side.

There is -- and Dick's creativity of the OCFS-MSAR system, there are bands of utilization that would make SED's rate setting-process so much easier, and avoid so many appeals, the adoption of that one element that's part and parcel of that MSAR system, it would be absolutely incredible.

The assumption of the present system is, that I have exactly the same number of kid-desk days two years later from the bay share, exactly, in order to have the same income revenue structure for that budget.

Now --

SENATOR LaVALLE: You're perfect, Brad.

We know that, come on.

[Laughter.]

J. BRAD HERMAN: You know, I served 62,000 days of care last year. The chances of me being able to come up with exactly 62,000 days of desk service, give or take day kids, is incredibly special from any business standpoint.

I could be down 5 percent, counties, because

of tax considerations; or, school districts could have -- could just reduce me by 5 percent.

It's insufficient for me to change any classroom structures, but it's going to deplete my revenue structure by 5 percent.

That system takes that into consideration.

This one doesn't.

I mean, 5 percent, you know, doesn't sound like a lot, but, when you're running on, 8, 10, you know, 15 million, that's a lot of money.

And the things are getting so tight, that one of our school districts even has to have their RAN guaranteed by the residential side's foundation, with the bank.

School districts don't, technically, do that.

You know, that agency has such a commitment to the youngsters that we have, to, in fact, guarantee that loan, at 1.75 times dollars.

A million dollar loan? Okay, we're going to guarantee you by a million seven-five.

That's how committed some of these residential agencies are to serve these kids. And the risk level of the kids that are being served is ever higher and higher.

Now, I'm not going to suggest that, for instance, this isn't going to be a costly venture, but I think one backdrop that's truly independent of what we've been saying, as to what the cost increase of this set of schools would be, take a look at the special education programs of BOCES, the day programs.

And, theoretically, our services on the residential side are a more restricted, more demanding set of populations.

Take a look at -- and I'm sure that Val can get you the information -- as to what the increases of those day programs have been over, let's just say, the last three, much less -- in fact, almost the last three -- last, three, last six, whatever it may be.

That utilization piece is a very critical item that's not been spoken to, and it bespeaks the rigidity, and the fragility, of the education-rate system.

And if -- some of these schools have closed. A number of the special eds have closed.

You have bonds -- Dormitory Authority bonds -- on some of these schools, that you had to reach in and pick up. You've had to pick up the RAN

dollars on these circumstances.

So, I think it behooves everyone in the room, to develop this system, to step up.

Quite, frankly, Mike -- while I hear Val talk about shrinking resources to, in fact, structure a program, there's talent on this side of the table that, frankly, could develop a system, and present it for critique and comment, without participation by State Ed.

Dick understates his knowledge and depth of skill in this meeting today.

The MSAR system is one that's survived two centuries now. It's a great system. It's worked, its dynamic. It will make their job much, much easier.

It's not going to be without cost. It's not going to be.

These are the most challenging set of kids that you have in the entire educational system. But you have, kind of a thermometer, as it were, in looking at some of those BOCES day rates.

These kids are tougher than the BOCES rates.

SENATOR FLANAGAN: Can I ask you two questions?

What was your first name again? I'm sorry.

J. BRAD HERMAN: Brad Herman.

SENATOR FLANAGAN: Brad, I'm sorry.

You spoke about, you -- I guess you have 200 slots, but you have 350 kids a year, and it's moving at warp speed.

In a general way, what do you a attribute that to?

Is it, districts pulling back?

Is it, just changing nature of --

J. BRAD HERMAN: I deal --

SENATOR FLANAGAN: -- the (inaudible)?

J. BRAD HERMAN: -- I contract for 47 counties, and probably about 20 school districts.

It's -- it's -- once a kid starts to make progress, they're going to take 'em back, and think that they can continue to have them make progress.

Sometimes, that youngster is reintegrated into the school district.

I think one of things that we should all look at, from a policy standpoint, is to how many kids are on home instruction in the entire state, that really are going under the radar screen, and not getting the appropriate education that they may, some of whom may be handicapped, possibly.

I think that's a critical piece to look at.

But, if -- there are, clearly, family court judges that have gotten marching orders from respective county executives, who say: If you show -- if you see a reasonable amount of progress, if mom wants to become reconnected with their child, bring 'em back. Be judicious about what those costs are.

It's not always the best situation.

I think what's important to understand is, in our families, at our school district, we recently did the statistic:

81 percent of our families are single or reconstituted; 65 percent are substance abusers; and, 36 percent have an incarceration history.

You're not going back to suburbia. These are intense, long-term investments in these at-risk children. There is no question. And it's a costly situation.

And it's -- in some cases, you know, it's not really terribly optimistic, because of the fact that this is not a kid in suspension. It's a kid that has a family around it that's quite fractured, actually.

SENATOR FLANAGAN: My second question, and I

want to make sure I follow your logic of BOCES: Are you using that as an example to show that BOCES has gotten more money? Or --

J. BRAD HERMAN: All it is, is an objective indicator; a sounding of board of what costs were, set by somebody who doesn't have a bias.

You know, somebody might say, Dick and I would come up with a structure -- of a rate-setting structure, and somebody would say: Well, it's very self-serving.

I'm trying to give somebody, you know, people in the room, legislators, and administrative folks, another place to look, to look at objectivity by people who, in fact, served handicapped kids. Kids that are about as -- as congruent as those that we may serve.

Granted, our kids -- the majority of my kids would be, considered, classified, "handicapped."

Those that may not, and there is an overlap in the two populations, are, otherwise, JDs.

I have the highest JD population of a non-profit agency Upstate.

SENATOR FLANAGAN: Not a trick question, but a tough question: Do you do it better than BOCES?

J. BRAD HERMAN: I think that those kids are

kids that have different needs, and they can, in fact, be served in a non-education-hours, back home.

I think we do a similar job.

Typically, I think that the kids that are at BOCES are more physically involved.

And, the kids that come to us might be more aggressive, or have a more dynamic situation.

I have -- I have the largest program for sexual offenders in the state.

Your local school district is not real warm to have those 30 or 40 sexual offenders in your neighborhood.

So, it's a little different. We each have our niche, and I think they do it well.

I've run 853 schools, 853 preschools, and Special Acts. I can't -- I don't have BOCES experience directly, but from what I see, they do a fine job.

But, budget structuring of those situations is much more liberal than ours is.

JAMES DeLORENZO: It's important -- Senator, it's important to understand, from a legal perspective, the private -- the approved private schools, by law, and regulation, must serve

children that the public entity is unable to serve.

So, children, if they could be served by BOCES, or a public school, they would be served by BOCES or a public school.

These are children who are unable to be served at that level, and are -- their needs transcend, or are beyond, the capabilities of BOCES.

RAYMOND SCHIMMER: Senator, I'm sorry, I'm Ray Schimmer. I'm the CEO at Parsons Child and Family Center here in Albany.

You asked earlier what the "typical child" was. And, the typical child is "atypical."

If we just use back-of-the-envelope numbers, we've got about 4 million kids under the age of 20.

In the 853 Coalition, we're only serving about 8,000. So, you've got about 1 kid out of 500 in the entire state who reaches this level.

Most of our kids at Parson -- or not most -- probably, 25 to 30 percent are coming to us from psychiatric hospitals, hopefully, on their way back into the district.

But, 45 different school districts send us kids in the course of the year.

And if there's a unifying description of those kids, it's that, their behavioral profile,

whatever the cause of that -- mental illness, trauma, juvenile delinquency -- their behavioral profile is more than the school district's entire range of special education services was able to manage. And, in many cases, more than what the BOCES was able to manage.

I've got some numbers here I can share with you later, about the number of regents competency tests, and the number of regents tests we've been administering, and what the passage rate on those has been over the years, and it's increasing quite a bit.

In most cases, you could say that those youngsters would not have had the opportunity to even attempt the test if it hadn't been for the 853 school.

Now, the point I want to make here, though, is that this is -- and I don't want to overstate this -- but this is dangerous work.

I did a peer review on a suicide in one of our colleague agencies last year.

We have a large order pertubation in the funding, either the amount we get, or the timing in which we get it, it's dangerous.

Bill pointed out here, I don't have a

football team to cut, or an arts program.

If I cut, I'm going to be cutting the teacher assistant who walks in the halls, trying to be at a crisis spot before the crisis develops.

We follow kids who burst out of the classroom. We have somebody walk around behind them. We try like heck not to confront them physically, and we've tried to drive down the number of physical involvements that our staff and our kids have. And, I think very successfully.

But, that's where we're shaving things off right now.

I'm not here today to get more money, or to improve the situation, I'm here to try to help us survive.

We can't take a no-growth. It's just not working. We can only pare our healthcare down so far, we can only pare our retirement benefits down so far, we can only cut that staffing so far, and then it gets dangerous.

So, I -- I don't know, as Brad said, I think, well done, BOCES does a fantastic work. There's no question about that. And, this isn't an "us versus them," but our situation is perilous right now.

SENATOR FLANAGAN: Okay, what we have --

JAMES DeLORENZO: Just one more thing, I just want to --

SENATOR FLANAGAN: Sure.

JAMES DeLORENZO: -- so we can round out the picture.

There's a group of schools that are 853 schools, that are not represented here, that serve children with significant intellectual disabilities, autism, medically involved, medically fragile children. Very -- very vulnerable population that you haven't heard an awful lot about, but, that -- that profile of those children is important for you to understand as well.

SENATOR FLANAGAN: Okay.

We were originally supposed to be up in Room 332.

We're going to take a break right now. We have food for everyone, up there.

And what I'd like to do is, come back -- it's 12:00. We'll come back here at 12:30, and then, try to come up with some type of, starting, or working, list, on things that could be next steps.

So, I would appreciate it if everyone would stay.

It's up in Room 332. And, we will come back

here at 12:30.

Please.

(The proceeding recessed for the noontime break.)

(The proceeding resumed, as follows:)

SENATOR FLANAGAN: Appreciate everyone's patience. Hope the food was -- that's from Rades (ph) which is always good.

(All participants say: Thank you.)

SENATOR FLANAGAN: Anyway, Senator LaValle had to take off.

And, trust me, I have great respect for the folks from SED. I gather they had other things to do, but I think it was very helpful that they were here.

What I would like to do -- I spoke to Senator Marcellino -- we touched on a lot of different areas. I don't want to walk out of here just having had a meeting.

I would like to walk out of here with some concrete ideas and steps about things that might get gone.

And I'm mindful: Jessica put the task force on there, Pam alluded to things that have been done in the past.

I agree. A lot of things have been talked about. And, I think we have an opportunity, and I look at this in my own limited time here, being Chair of the Committee, I want to try and do something.

So, if we could just talk about several different things. And, I'm going to take the liberty of saying, some of what we would like to do is, come up with some ideas for the Executive, to see if we can convince the Executive to put items in his proposed executive budget, because, if it's in there, and you support, and we agree with it, we don't have to negotiate it.

And, if they're positive steps, I think that's part of what we should be doing.

So, when we talk about some different areas, if you have concrete things that you would like, that aren't -- don't get accomplished here today, I can just say: Today is the 12th.

By the end of the month, can you forward whatever additional ideas you have to the Committee?

And we'll have some before we leave here, but, any additional ideas, something that may come up that you hope could be fruitful.

And what we will do, is, compile those, and

share them with everyone who has been here, so you can see each other's ideas if they don't come out now.

But, I would like to focus on a couple of the things.

Mark, I think you really started this with the concept of timeliness.

How do we -- how do we get from Point A to Point B?

And now I'm asking for, like, real recommendations.

If there are -- if you have an idea, what is it?

I mean: Is it prompt payment? Is it changing a date structure?

What do you think that should be?

If we could just focus on that for the moment.

MARK SILVERSTEIN: Well, I mean, you said it, and I want to thank the Committee, because you've actually -- you've impressed me; we know you've done your homework.

So, we thank you.

Prompt payment and timeliness is essential to all of this. And it's that simple.

And I know Val has staffing issues, but, if we set up these parameters, and we know we can respond.

A colleague here spoke to a multi-year rate.

Maybe that helps. Don't know.

We talked about a new system, similar to the one OCFS is using.

I think those are options that we should be exploring.

SENATOR FLANAGAN: Okay, since beauty is in the eyes of the beholder, let me ask it with a more succinct.

When you talk about prompt payment, DOB and SED might think that's 18 months. You may think it's 30 days.

So, is there something specific?

JAMES DeLORENZO: I'd like to know about --

SENATOR MARCELLINO: Before you -- before -- let me just redirect it, just a little bit.

SENATOR FLANAGAN: Yes.

SENATOR MARCELLINO: What's causing the lack of prompt payment?

I think that's the key element.

To simply say, I want prompt payment, is one thing. That's all well and good. And we all do.

But, what is the prime -- what can be done to -- in the process, to get you where you want, and that is the prompt payment?

BILL WOLFF: Part of is it prompt payment in full.

Because, we're actually waiting to get the final tuition for two years ago. And, then, we bill that. And then it gets worked through again. And because those changes cascade forward, then we're billing last year's, back again.

And, so, it's those -- it's those -- you know, it's those last dollars.

I mean, when we've got a rate in front of us, frankly, we can send it out, and we get payment pretty promptly on that.

That exchange is -- it's just that we're not getting the actual rate that we're going to be entitled to for the services in real-time. It takes a long, long time for us to get that, if we're in a waiver situation, or an appeal situation. Or, even if -- and it's been better lately, because, certainly, of the budget timeliness -- generally, no rates were issued, or nothing really much happened, until a budget was resolved, and then things were promulgated.

So, in years past, it has been as normal, sometimes, as for a rate to issue -- issued for the regular year, in December or January, or well after the first of the year, for a July 1 rate.

So, then, we're retro -- that's all.

The timeliness, it's not so much, that's part of the relationship with our -- you know, the purchasers. And those vary; they go up and down.

But, it takes us a long time to get to the point where we've actually got, This is what you need to pay me for what happened in 2008-'09.

And, who wants -- who wants to send that bill, and who wants to receive it?

RAYMOND SCHIMMER: The appeals process is not abnormal. That's normal.

So, you are issued your rate, you have to appeal the rate.

Last year, we finished up a four-year period in which we were owed $1.8 million.

After four years, that appeal was approved. We then had to send out bills to --

SENATOR MARCELLINO: What took them four years?

RAYMOND SCHIMMER: I don't know. I don't know.

SENATOR MARCELLINO: Sure you do.

RAYMOND SCHIMMER: All I know is --

SENATOR MARCELLINO: You were involved.

RAYMOND SCHIMMER: All I know is, the rest of my bills come in in 28 days. 28.6 days.

And this one took four years.

So, our line of credit goes up, blah, blah, blah, all that. But then what happens is, the school districts received an envelope from us, with a letter, telling them that they owed four years of back payment, on this rate.

Albany didn't budget for that payment that year. They didn't even know that they had the obligation.

So, that, anything we could do to get off of that normal situation, which you have to appeal, would be good.

Absent that, and I do think that we want to do things that are simple, that we can actually get done, as opposed to very complicated things that we may not get done.

If the three-year issue at least reduces the incidences of that by two-thirds, because now we only have to appeal every three years instead of having to appeal every one year.

As we talk today, the danger of that, and the risk for us is, if we get a bad rate in year one, we're gonna have to live with it for -- for three years.

But, the anomaly of this rate-appeal business is very tough.

And, again, in some of the situations that we looked at last year, with agencies facing insolvency and bankruptcy, part of it was internal management that maybe wasn't as good as it was. But part of it was because they were waiting for money that they had earned, that had not been delivered yet.

SENATOR FLANAGAN: All right, so, let me just go back --

RICHARD LASKY: Can I get --

SENATOR FLANAGAN: Yeah, go ahead.

RICHARD LASKY: -- Senator Marcellino, you asked: Why does it take so belong for an appeal?

SENATOR MARCELLINO: Right.

RICHARD LASKY: A lot of the appeals that I dealt with our group, regional associates were the people who look at this, at individual schools, may have made recommendations to the schools, that's, uhm -- change your programs. And, are they -- be out of compliance with a regulation.

So, the schools do that.

They submit the information to the rate-setting unit, who then starts a process of approving what the regional associates already told the school to do.

As part of that process, they have to look at these drafting standards, that aren't in place, and they weren't in place four years ago, and they start evaluating the program against those draft standards.

Then, once they can get that, an appeal then goes to the Division of the Budget. But, then, that may have raised a question, which, then, it has to go back to the agency, and they answer the question at the Division of Budget.

So, you've got this constant churning of paper to approve something that was required of the agency two or three years ago.

Once all of that stuff is happily decided, as approved, maybe not everything gets approved. And only that portion that is substantiated by the application retrospectively to standards, then the rate gets changed.

Now, Ray's situation, he didn't get everything he put on board that was required of him

to do three years ago, then he had to make a cut against that. So, he was, you know, still in the hole.

But, that's why it takes of long; you've got all of these approval processes, and retrospective reviews of programs, and reviews upon reviews.

LEE LOUNSBURY: If I may just add to that --

SENATOR MARCELLINO: Go ahead.

LEE LOUNSBURY: -- in other words, the programmatic arm of the State Ed tells the program: Add three more staff to do "X," or else you're out of compliance.

The school does that.

They may or may not ever see a rate increase to accommodate what they were told to do. And if they do see it, it may well be several years down the line.

That's prob- -- one big issue, I think, we should --

SENATOR FLANAGAN: Okay, so, let me -- I don't want to interrupt Senator Marcellino.

SENATOR MARCELLINO: No, go ahead.

SENATOR FLANAGAN: On that very point -- now, this is legislative -- if we had some type of

directive that said, if State Ed says you have to do "X," they are required to pay you in "X" period of time.

UNIDENTIFIED SPEAKER: Deal.

LEE LOUNSBURY: I mean, I -- I imagine we'd all be supportive of that.

With all due respect to our colleagues at DOB, would that legislation ever get signed and enacted, I think is a pretty big question.

SENATOR FLANAGAN: Ed definitely told me he would support it.

LEE LOUNSBURY: Thank you, Ed.

UNIDENTIFIED SPEAKER: Thank you, Ed.

PAMELA MADERIOS: I think a lot of the question is: We have to work within parameters of, everything we do has to be cost-neutral.

And I think what we're hearing is, that's not practical, because there are going to be some -- some costs that you're going to have to pay for.

And, if you've got zero growth that's in the methodology, and, any ideas that we advance have this overarching restriction on them that they have to be cost-neutral, then we can't think outside the box, to your invitation of earlier.

But, problematic with the way that the whole

methodology sets up is, there are no deadlines, and there's no penalties.

So, you can say, April 15th, SED has to shove over to DOB, the methodology.

Okay.

And DOB is supposed to react to it.

In our world, we find that it's better if you say, and if you don't deny it, then it is deemed to be approved.

Okay, so that there's a whole kind of way to present information along that, and to kind of hold agency people's feet to the fire, or hold DOB's feet to the fire.

And the same way with SED; they can't possibly do everything that they're asked to do.

However, there are no time limitations, so that, if you say, if we submit an appeal, the appeal has to be acted upon within, 45 days, 60 days.

The reasons why it goes on forever is because, the RA died, or, you know, there's something else that's going on.

So, all of the same people are not involved in the process anymore, which means you have to go reeducate people, which is problematic.

So, I think that there'd be -- one of the

main focuses should be, setting deadlines. And when those deadlines aren't met, there's certain sanctions or penalties that will ensue; either, if a program puts in for this kind of modification, or this rate appeal for an increase in its tuition and its rate of reimbursement, if they don't finalize it within a date certain, then it's going to be deemed to be approved, and DOB is going to have to certify whatever that application is.

So, to put the onus on those that -- it rests all with SED, to crunch the numbers, and to fight amongst themselves, programmatically, and fiscal, to determine whether or not it's a legitimate, reasonable expense.

And, then, SED fights with DOB, because they've got their own standards of whether or not they think it's reasonable and approvable.

And, we've always recommended a fast-track in efficiency, so that, if it's 5 percent within your current rate, then that should be fast-tracked with DOB. DOB doesn't have to take it all apart, dismantle it, and build it back up again, which is what all the time is spent over at DOB doing.

So, a fast-track, like a Fast-Pass at Disney World, that kind of thing, is like what we've

recommended, within a certain -- you know, 5 percent of the existing rate, for instance.

And you would eliminate, probably, a third of the rate of appeals if you do that.

LEE LOUNSBURY: The other piece to add on rate of appeals is, right now, if a school appeals Issue "X" from three years ago, and let's assume it's resolved favor -- in the agency's favor, they have to appeal the same exact issue for two years ago. Start the whole process over again.

So, one concrete suggestion is, if you appeal with an issue, and it's been an issue for several years, that appeal holds, if you will. You don't have to start the process all over again.

SENATOR FLANAGAN: Okay, in the -- and that makes eminent sense, in the realm of appeals.

I listened to, we listened to, SED talk about, prospective rates, and reconciliation rates.

Do the bulk of the appeals happen on the reconciliation rates, or on the perspective rates?

PAMELA MADERIOS: Your perspective is generated from your recon rate, as a matter of the methodology.

So, what happens is, they'll come to you, and say: Here's what I'm thinking is your recon rate from two years ago.

And, then, you have, 10 days, 30 days, to comment on it.

And then you fight back and forth.

And then that keeps going on and on and on, until, some point, SED says: Okay, I'm done talking.

They set the rate. And then the prospective is automatically a function of whatever that recon is, because it's -- it's with trended, if there's any trend factors.

So --

SENATOR FLANAGAN: So, if you -- what do you appeal?

PAMELA MADERIOS: You're appealing your recon rate, because that's the one that's being assessed by SED.

SENATOR FLANAGAN: Right, and in your experience, if -- I'll just pick a number -- out of 1,000 cases, how many get appealed?

Is it 5 percent? Is it 50?

PAMELA MADERIOS: I think SED has that information.

And Tom --

SENATOR FLANAGAN: Well, I am sure they do.

PAMELA MADERIOS: I think Tom Hamill said, close to a third of all tuition rates. And that might have been dated, like, maybe a couple years ago. But, it might have been --

J. BRAD HERMAN: I would guess it's much higher than that now, especially because of the zero-growth situations. And, let's say, higher mandates of compliance issues, NCLB, and otherwise.

RAYMOND SCHIMMER: A lot of this was exacerbated by the attempt to bring kids in from out of state; youngsters who had been placed out of state by their school districts, because there was no organization in-state that could care for them.

In order to do that, the regional associates called for upgrades in the capacity of a lot of the organizations.

So, as Dick has said, the organizations then hired the staff for the upgrade, assuming they would get paid. And then they, either, weren't paid, or, they were paid a number of years later.

Smaller organizations didn't have the reserves to keep going, and got into financial

trouble as a result of that.

But, the appeals process increased in volume and intensity, along the time that we were trying to bring kids back in from out of state.

SENATOR FLANAGAN: Okay.

To comment on something you said, Pam: I respect everybody who is sitting in this room whether it's DOB or SED.

Part of the reason I'm asking, is because, oftentimes, you know, SED might actually have a file that says: We have 578 appeals.

Your coalition may come, and say: No, there's 830.

The reason I'm asking is, not to make work, but to find out, are people actually seeing the same kind of thing?

So, I would specifically ask, this, and it doesn't have to be at this moment: Could you, either, individually, or collectively, submit to us what you think should be done vis-a-vis the appeals process?

Whether it's, the timing, the submission, I get the whole idea.

I like, Pam, the idea of, if it's not done by a date certain, then it's deemed approved.

We've had that type of thing with the Comptroller's Office on certain things. And, they don't particularly like it, but, there, that has some real value.

So, specifically, as it relates to that kind of timeline.

And, as I said, whatever we get, we will share with the people who are here.

So, it's not, if someone has a great idea, we will be more than happy to take it.

PAMELA MADERIOS: Can I just ask for a clarification, because, a rate appeal is a really, really narrow thing. And that's -- I don't think that that's what most of us use.

We negotiate, or challenge, the proposed reconciled rate. And that's not the same as a rate appeal.

A "rate appeal" is: I just give up. I need to re-base, or whatever.

And that's with the very limited justification of inability to provide IEP and life and safety and hazard, or whatever.

So, I think what you mean to say is, that, any challenge to a proposed rate, whether it's through appeal or through the reconciliation

process.

SENATOR FLANAGAN: Okay, but --

PAMELA MADERIOS: Because I think you're going to get --

SENATOR FLANAGAN: -- but, while I certainly understand that, I think it would be important to differentiate in terms of quantity --

PAMELA MADERIOS: Okay --

SENATOR FLANAGAN: -- because, if SED comes back, and says, We have these proposed reconciliation rates that only represents 5 percent, you may turn around, and say, No, it's 65 percent.

Okay, so, that, on the appeal.

And then, Mark, going back, and, Bill, you commented on this, on, prompt, and timeliness.

It doesn't sound like there is a -- any type of significant problem with your pay, was, your school districts who are supposed to send you the tuition, generally.

BILL WOLFF: Not systemic. I mean, there are individual situations here that, you know, we can navigate, generally, with, you know, like, New York City, you know, the school board. You know, those kinds of things, you know, on a

case-by-case by basis.

But, generally --

SENATOR FLANAGAN: So, in terms of prompt payment, I think that would tie into the appeals process in the timing of those decisions. And, then, the timeliness, quote/unquote, has a lot to do with the lag issues that we were talking about.

ELLEN BERGMAN: Right, exactly, because, if you don't have a certified rate, and you're billing interim rates, waiting and hoping that, eventually, you'll have the rate that will cover your three-, four-, five-year-old expenses, then you have to rebill again.

So, that, the last time I appealed my recon rate, which was two years ago -- because, frankly, we don't have the staff to do it, I have to do it myself, and, I finally ran out of enough hours in the day to put it all together -- but, the last time I did that, we were looking at a rate that was four years old.

And, in one year, we actually rebilled three times. And I said, I'm done, because I had to bill for, you know, six years ago, five years ago, four years ago. I mean, it was ridiculous.

So --

PAMELA MADERIOS: Do you turn out prompt payment, though?

Because, you're right; it's not so much that the districts aren't paying promptly, because, like in 4410, we've got a "quarterly prompt payment" rule, and that's just what it is.

UNIDENTIFIED SPEAKER: Right.

PAMELA MADERIOS: However, there is no teeth in that. And so, that, if, in fact, a district is a little derelict in getting its money to you, you'll go to SED, and say: Hey, can you just whisper in their ear that they need to pay me?

And SED says: I've got nothing. I have no teeth.

We've suggested to them: Well, why don't you withhold their State aid until they pay me?

So, you need to kind of make some kinds of correlations for them, because, for those districts that aren't paying promptly, there has to be a sanction if they don't pay promptly.

And there isn't any one that exists.

SENATOR FLANAGAN: I'll be sure to tell the school boards that that was your idea.

PAMELA MADERIOS: Okay. They know where to find me.

SENATOR FLANAGAN: If we could -- all right, so, on that point, if you could, again, submit what you think is appropriate.

And, in talking to our own staff, I go back to some very basic questions, and I had said this one on the break, you know: Is this regulatory authority? Is it statutory authority?

When someone's says, We have to do it, well, why?

Like, why do you have to do?

And, what is your concept of what the appeal process is, and how long it takes?

If we could switch to, regulations -- Senator Marcellino and I were talking during the break -- about administrative stuff.

Are there things that -- I don't know if they may amount to next to nothing, but are there things that you have to do, from an administrative and regulatory standpoint, that add hours and hours, in terms of paperwork, but don't do anything to educate your students?

I'm sure that there's --

ELLEN BERGMAN: (inaudible) issue, but, you know, just -- and, it may not be an issue, I don't think it's an issue for the 853s, but, we have to

pay the MTA tax, Special Acts, and we're not reimbursed for it.

So, that's just clear dollars.

SENATOR FLANAGAN: Okay.

PAMELA MADERIOS: And, actually, it might be helpful, because, when SED was doing its mandate relief, SED did prepare an entire list of all the regulations that were imposed on the special education players, some of them that would have been in excess of what the federal requirements would have been. But, there was a whole regulatory chart that they provided to the regents, which I think we probably all have a copy of --

Doug, you've got it.

[Laughter.]

-- that might be a helpful starting point for you, because it does, about, how many; I have to have, you know, seat time. I have to have, you know, the kids are sitting down for 5 1/2 hours. Do I really need 5 1/2 hours? I want to have Arbor Day.

I mean, there's a whole list of things, that, I think we've all been clamoring for is flexibility.

You give me $100, and tell me that you want me to do -- that you want to move this kid, from

here to here, and then let me determine how to spend those limited resources to do that.

So, we're talking about, like, the 70/30 parameter in the methodology. That's antiquated.

If I can manage it for only 10 percent, then why don't I -- why can't I use that other 20 percent towards more direct services? That's the best bang for the buck.

So, those are our artificial constraints that have been put in, either through the methodology or regulation.

So, if (inaudible) that chart would be helpful to you, I'm sure that we can get you a copy.

SENATOR FLANAGAN: I'm sure we get access to it.

PAMELA MADERIOS: Okay.

SENATOR FLANAGAN: But, I think the challenge in that area, for us, as legislators, and I've said this before: You know, if I were to come out --

And let's put -- I'll put this proposal out there, and Senator Marcellino will probably say, I have to go now.

[Laughter.]

-- if you come out and say, We're gonna

repeal all the additional State requirements, as it relates to special ed, and we're just going to back to what the federal minimum standards are, within 24 hours, you know, I, and anyone similarly situated, would be castigated for not caring about children or adults, and trying to obliterate the system.

So, if -- "if" -- we were to go down that road, even partially, we are going to need people with us, people who are actually delivering the services, to watch our backs, as they say.

UNIDENTIFIED SPEAKER: That's fair.

PAMELA MADERIOS: Well, can I just clarify?

I'm not really inviting you to remove anything that's excessive --

SENATOR FLANAGAN: I know that.

PAMELA MADERIOS: -- over federal.

SENATOR FLANAGAN: I know that.

PAMELA MADERIOS: I mean, 'cause my guys would kill me.

But, I do think that we can identify things that are restraints, artificial restraints, and bind and tie our hands, and prevent us from doing the things that we need to be able to do.

SENATOR FLANAGAN: That's fine. I get the

point.

DOUG BAILEY: Yeah, we've actually -- I mean, we've already interacted with SED, and a number of those. And, we're in the process now of the follow-up, trying to refine it a little bit tighter.

One of the issues we face, I think, is SED feels more focused on, if it's in reg, we really don't want to change it. And that's difficult for us.

I mean, the reality is, we're asking for something simple.

Say, as an example of: If a child comes to us, the current IEP says his class size is 6:1:1.

Well, what we'd like them so say, is, if they came to the LaSalle school, the class size at the LaSalle school is, generally, 6:1:1, but we're gonna move staff around, based on the needs of the kids in any given day.

As Ray indicated, some classes, they'll become volatile real quick. That day, you're gonna need more staff.

So, we're asking, say, make that type of a change. Make it very simple. It would allow us to take the staff we currently have, no additional cost to all of that, and just use them more flexibly

within the program.

But, right now, they're fixated on, the IEP has to say, the kid gets a 6:1:1 classroom. And if the regional associate, the monitoring division, comes in and see as a kid in the classroom, there's no aide in the classroom, he gets cited for it.

And, to me, it doesn't make any sense.

SENATOR FLANAGAN: All right.

Doug, I would add to what you're saying, and I want to keep things in perspective, and on balance: I'm not necessarily looking to suggest that we get immersed in every aspect of what goes on. But, to the extent that you can keep us in mind as you have these discussions, I think there should, in many respects, be a continuing healthy friction between and amongst the players, whether it's the Executive or the legislature, there are certain things that we're going to push hard on with the Executive. There are certain things the Executive is going to push hard very back -- back very hard on us.

So, if we are knowledgeable, there are things that perhaps we can do to help in that regard.

So, if there are regulatory components, and some of these things may come out of the coalition

already, in terms of what you're advocating.

And, then, in relation to that, I was talking to Bob Farley about, sort of the general concept of best practices.

Now, despite all the problems that we may have, and the challenges we have, in the state of New York, in my humble opinion, we are vastly ahead of many other states in the country, in terms of how we do things.

But, that doesn't mean we can't learn from, either, colleagues, or, if you think there are things going on in other states that we should be mindful of and be looking at, whether it's through financing or program, or even from a regulatory standpoint, that would be helpful as well.

BILL WOLFF: We have seen some of that with, back earlier, to Ray's point, of the small universe of kids, and the build up of best practice with this exceptional group of kids who generally have failed in a lot of other settings, we do see collisions within regulatory standards, and what's emerging best practice in the fields, in some of these -- in some of our schools.

And, where emerging best practice is -- is, basically, contrary to reg, and some of the best

things that are being tried with very, very profoundly disabled kids, wind up being a problem in regulation, even though, probably, if everybody stepped back, they'd say, that this is a good idea.

And, folks who are closest to the service system really know some of the best stuff that's going on with autism treatment, for example, and, yet, the regulations have fallen behind on what some of those practices are, and they wind up being defined as, not eligible for use, or, we get caught in some sort of trap of running back into the IEP, and it's not there, and it's all over the place.

SENATOR FLANAGAN: Well, let me ask you --

BILL WOLFF: Those are complicated issues.

SENATOR FLANAGAN: -- as a parallel: One of the -- when you first get to the Senate, you get opportunities to serve in different capacities.

And, generally, if you're here for the first time -- I don't know if Senator Marcellino did this -- but one of the things I chaired was the Administrative Regulations Review Commission. I know it is extraordinarily exciting, in terms of its title.

[Laughter.]

SENATOR FLANAGAN: But, in reality, in terms

of the work that you do, it has some real bearing.

My question is: Do you feel that the regulatory process, from a perspective standpoint, do you have decent input into that, and do you think that process works?

Because, one of the things I've heard about, SED -- believe me, I would say this if they we're here -- is, that, they get blamed for a lot of mandates. They get blamed for a lot of things that they make people do.

But, in lieu of some things like that, they'll come up with, what are directives.

UNIDENTIFIED SPEAKER: Uh-huh.

SENATOR FLANAGAN: It's not a mandate. It's a directive.

And it's one of those things, where, you know, like, you're the child, and if you don't listen to the parent, then that can create problems for you.

So, from a procedural standpoint --

And, Bill, this may tie into the concept of best practices.

-- is that part of it working at all?

I mean, do you have input only after the fact?

Or, do you have some input on the upfront part of the process, to say: Hold on a second. Don't -- don't do it this way because it's not going achieve the intended result.

MARK SILVERSTEIN: Well, it's time to put foot in the mouth, so, let me do it well.

SENATOR FLANAGAN: I thought I was doing that quite well.

MARK SILVERSTEIN: Well, staff -- let's take the staffing stance, the classic example of someone saying that we were involved.

I attended a number of meetings, but there was no feedback.

The staffing standards were put in place, and they just appeared.

Well, why, Mark?

Well, I went through an appeal that took 4 1/2 years. I had "X" amount of security staff, difficult kids, as my colleague said.

So, by the time the appeal is finishing -- was finished, staffing standards are in place, I lost $250,000 because I had too many security staff.

Why?

Well, the staffing standards were here, but they weren't there.

The rationale was: Well, they're in place now.

I spent this money. It's my obligation to keep my students and staff safe.

I lost a lot of money.

Now, I will never go through another rate appeal again. That's --

If you hear me, God.

-- but, that's an example of, we sat at meetings. But I can -- you can ask my colleagues here -- Who asked me about how many security staff I need, or how many teachers I need, or how many psychologists?

Nobody.

PAMELA MADERIOS: And to the point those -- and we attended the same little workgroup meetings on the staffing ratios, they decided that that's what they wanted.

MARK SILVERSTEIN: Right.

PAMELA MADERIOS: They had a program, and fiscal was kind of like watching on the side.

We engaged; we said: No, that's not going to work. What about this? What about the other thing?

And, then, they just went through, with minor revisions, implemented the thing, without the

benefit of a regulatory framework.

It just, is.

So, a lot --

HEATHER EVANS: It's a considered draft.

PAMELA MADERIOS: Right. And, still -- and that your reference about the draft and rate -- staffing ratios, because they are implemented, they are given to the RAs, they given to the fiscal people, but they are nowhere in regulation, they are not anywhere in any printed document that's accessible, so that we could gauge our conduct accordingly. They're just imposed upon us, period.

And we were engaged in the process, but our input was minimized.

Part of the problem with SED, is because they can't do -- they can't put a regulation out there, even on an emergency basis, unless the regents has an input to that, which means it's a very protractive process, because the regents only come in once a month. And, so, there's an unnecessarily postponement of immediacy.

The only way they react quickly, is when, you, the legislature, directs them to do something by statute, and there, they got the 120 (inaudible) days thereafter, where they have to do something to

develop the regulations.

And, otherwise, that's why they're resistant to changing regulations without the direction of a statute, because it's such a protracted process.

So, we would encourage you to, in fact, set out the steps that you'd like it to take: We want you to do "this," in statute -- because, then they have to -- their response is, to promulgate the regulations; as opposed to the converse, which is, I'm trying to change policy through regulations, which their institutional structure doesn't allow for it --

SENATOR FLANAGAN: Yeah, I would make two comments, which are, perhaps, more personal in my own philosophy.

I think one of the -- and this has been going on for years, but one of the scariest phrases that could ever be in a piece of legislation is, at the end, outside of the effective date, is when the bill says: The Commissioner shall promulgate rules and regulations in accordance with this act.

Because, that is often diametrically opposed to what the legislative intent was.

And then, second part, relative to the State Administrative Procedure Act, in my humble

opinion, there is far too prolific a use of the adoption of emergency regulations, because, I look at it like, the kid who waits to do the term paper until the last week of the semester, and then the agencies just promulgate emergency regulations under the guise of the public health, safety, and welfare, and those who are affected don't have the appropriate time to comment.

Am I getting it right?

J. BRAD HERMAN: Okay.

SENATOR FLANAGAN: Okay.

That -- that is clearly challenging.

Can I -- I want to ask more a specific question.

On the -- your initial rate versus the reconciliation rate -- and I know this is general -- but, how often do they coincide?

Is there, like, a great disparity?

And I'll just pick a number.

If you have $20,000, and then your reconciliation rate ends up being 14, is it, like, 20 and 19? Is it -- do you have -- is there often a big disparity when you ultimately get your reconciliation rate?

Does that make sense, the way I'm asking it?

ELLEN BERGMAN: In my experience, it's generally been lower, but it's not 20 percent lower. Maybe, 5 to 10 percent lower, because there's always something that's been excluded. Either, the student population was smaller, or -- the latest, we billed for therapies, because IEP therapy frequencies went up, but they said we had screened, and we had too great an increase in -- in this case, vision services.

I really couldn't help the fact that the children needed vision services, but, because it went up at too great a rate, for over a year, it was excluded, because it hit what they call "the screen," which is growth factor.

So, you always lose something.

And, then, used to appeal. I won't appeal anymore.

I used to appeal, but it takes so many years, that, it's just not worth it.

PAMELA MADERIOS: When the methodology was first developed, the reconciliation was put in --

And, Doug, tell me if I'm wrong.

-- with an eye towards being sensitive to the fact that you may have incurred costs that were not currently in your rate; and, so, therefore, it was

designed as a way to make you whole.

We've so long passed that. That doesn't exist anymore.

Now, it's just a weapon by which our --

ELLEN BERGMAN: They take back.

PAMELA MADERIOS: -- they take back.

ELLEN BERGMAN: Right.

PAMELA MADERIOS: And that's what it is.

I rarely see anybody's rate -- and I've managed these all the time over at SED. I rarely see anybody's rate go up as a response -- as result of anything.

It's just another compression on the system: I'm going to disallow that cost. I'm not going to buy in that you needed to change. Or, build this building, because the other one was, you know, falling to pieces.

So, it's just a -- it's a weapon that's used to disallow costs that you've already incurred and spent the money on. So, you're always deficit spending.

BILL WOLFF: You know, if I could?

SENATOR FLANAGAN: Sure.

BILL WOLFF: One of the things that I think that we looked at -- and I'm not sure if this is in

regulation, or where it would fall, as we look forward, but, we've looked for this with some of the bills -- is, the ability to retain a small reserve, because we're not perfect in operating these things.

So, basically, the reconciliation system sweeps up any efficiencies, or operating reserve, or any income over expense. It zeroes it out.

And, you know, that's not a very practical way, generally, to run a business.

I understand, that, in terms of State-contracted dollars and government spending, that there's some interest to be precise about that. But it -- but, school districts are held to a different standard, public school districts.

And our basic role is to fulfill this free and appropriate public education for kids that are in these, you know, extreme situations.

So, I think -- you know, generally, I think our system ought to be no more -- I want to say the right word -- the controls on growth, the controls on such things, and the opportunity to run the business, ought to be, probably, no -- it's not exactly the same, but we ought to look to some of the restrictions that we send to the public school

districts, with respect to their operating.

I was on this public school board for a long time in my community, and I understand the balancing effect of the community, and those who can vote with respect to doing the good job representing them and managing things.

We don't quite have that in our schools, with the community.

But, you know, it's really -- it's really -- the advice, I mean, you know, to the regents, basically, I mean, SED has studied it, and said: You know, we see real troubles in public school districts, where, you know, the reserves are unavailable, or that fund balance is not managed properly, because it needs to be available to smooth things out.

And, that's allowed for in the public schools.

I understand the con- -- that the -- you know, the idea that state government wants to contract exactly for what it gets, but there needs be some margin in there for us, because that's how we can manage some of these periods more effectively than through a waiver process, or a need for an appeal process, or somehow to get around it.

We're zeroed out every year on that, so --

RAYMOND SCHIMMER: Yeah, just to take that a little further, and we've mentioned this before, it's not in our best interest to end up with the rate that's higher than the public school; than it costs the public schools to do the same work.

We're non-profits. We're supposed to be contributing here, above and beyond. We bring value to the proposition.

But, if we don't at least stay parallel, bad things start to happen.

We have a no-growth period right now.

It's not no-growth in public-school teacher contracts. Their contracts continue to advance.

Our teacher compensation is flat, and it's going to stay flat.

When the recession ends, I expect it any day now, the difference in the compensation between the public school and the non-profits are going to be enormous, and we're gonna have an outflow. The sucking sound will be our staff leaving.

We don't need to be equal to, but we need to be parallel to, going down the road.

And I'm not sure why you would handle it differently. We're executing the state's

obligations, under state and federal law, to educate these kids.

We're not an Albany academy; we're not a private school that a parent chooses on their own. We're actually providing a public school service.

And this is going to distort a lot of things, this variation. I think you all know now, the property caps can -- the 2 percent property cap can be pierced by changes in public-sector pensions.

It's not the same for us. We're not getting any 2 percent. We're getting zero percent no matter what happens our pensions and what happens with our healthcare.

So, when we come back to you with this statement -- and I think we'd be delighted, will we not, to put this together -- I think that's certainly going to be one of the points; that there's got to be some linking between the public system and the 853s.

SENATOR FLANAGAN: Yeah, Ray, I agree with what you're saying, but I want to go back to Bill's point first.

RAYMOND SCHIMMER: Yep.

SENATOR FLANAGAN: Senator LaValle left, and

I want to take the liberty of speaking, essentially, on his behalf.

He is an example. He has tremendous reservations about the concept of the fund balance, generally, much more, much more related to school districts than anything else, because he thinks that they've abused that.

So, you do have a number of legislators who have an inherent bias against creating further opportunities for taxing entities, right, putting you in that category, so to speak, to go out to the public, and start to build up their reserves.

In my opinion, the fact that the State of New York has a structure like that for the state itself, it makes it kind of hard not to give that opportunity to a school district, or, the type of situation that you're describing.

So, you'll have different opinions on this subject. And, honestly, I don't see that changing right now. But, it does -- you do make a good point, because, you know, the level of reserves, even if it were at 4 or 5 percent, if we said to you, you'll have 2, that's a lot better than zero.

BILL WOLFF: We could ask for something different than a fund (inaudible) --

SENATOR FLANAGAN: Yeah.

BILL WOLFF: -- but, some of the other rate methodologies, reward, or acknowledge, an efficiency performance up against utilization, that gives you some ranges in which -- obviously, you don't want to create a fund -- if I have room for 100 kids, and I said, I only want 50, and I'm living large, that's not what any of us want.

SENATOR FLANAGAN: Right.

BILL WOLFF: You know, you want to say, if you've got room for 100 kids, I'd like to think, at about, maybe, 90, 95 there most of the time, and that's what we're paying for. Can we do --

And, so, there's ways, I think, that a rate methodology can make that work, and it doesn't have to be called "a fund balance," and there's ways that it can be managed, so it doesn't go to excess.

We don't have a lot of money. We don't know what to do with the little bit of dough we've got. I mean, our staff are looking at us, saying, "Hey."

But, that preciseness of what we're left with at the end, you know, is really an interesting -- the business folks that are on my -- on our boards, always ask: What? How do you do this? How are you that good, that you can hit zero every

year?

SENATOR FLANAGAN: All right, can -- on the preschool versus school age -- Jim DeLorenzo talked this; Doug and I were talking about this during lunch -- it doesn't have to be a concrete answer right now, but, it seems that there's some type of consensus that there should be a differentiation between those two entities, and that would help eliminate some of the problems.

So, I'm going to take that as a "yes," unless we hear to the contrary.

PAMELA MADERIOS: Yes.

MARK SILVERSTEIN: Yes.

SENATOR FLANAGAN: Okay.

The other thing is, on the -- I'm going to call it the "Lasky model," since he, apparently, is the architect of a lot of this, if we moved to that MSAR model, that seemed to be -- everyone seemed to be generally supportive of that.

SENATOR MARCELLINO: What does that acronym stand for?

RICHARD LASKY: Qualifications over the course.

LEE LOUNSBURY: What's the acronym stand for?

SENATOR FLANAGAN: What does that stand for?

SENATOR MARCELLINO: What does that acronym stand for?

LEE LOUNSBURY: Maximum State Aid Rate.

RICHARD LASKY: Maximum State Aid Rate. That's -- that used to control the amount that the State reimbursed local districts who purchased care.

SENATOR FLANAGAN: Okay?

SENATOR MARCELLINO: Okay.

LEE LOUNSBURY: Just to add to that that, Senator, I think people, on their own, would be willing to work on that. It doesn't have to be all State Ed doing that --

SENATOR FLANAGAN: Right.

LEE LOUNSBURY: -- all the work. You know, we can certainly work in partnership with them.

And, I think it's, not only figuring out how to use that model for these purposes, but, then, how to manage the transition period.

It's really a two-step process: How do move what is to the new world, if you will.

PAMELA MADERIOS: And if I could make a suggestion?

The dynamics of the day programs for 853s are different than the dynamics for the residential 853s. So, there has to be

modification accommodations to that distinction, because their population is a lot different than my day program 853s.

So, just --

SENATOR MARCELLINO: I don't know it's absolutely necessary to work with State Ed in coming up with some kind of ideas. You almost might be better off if did you it apart.

They come up with their ideas, you come up with your ideas, and see how it works.

Submit it to the Committee, and let us bang it around a little bit, and let's see what plays; because, otherwise, you're in a negotiation from day one.

UNIDENTIFIED SPEAKER: That's a good point.

SENATOR MARCELLINO: And one side could kill the other side off, by just not negotiating.

And, so, it's -- you don't want to do that.

I would -- keep it separate, and come up with some thoughts that you think.

And I go back to my friends at the Department of the Budget, and I'm not being facetious, but, you guys are involved in too damned much.

I understand. I understand the money. I

really do. I get it.

You're trying to keep a watchful eye over things, but, in many cases, you're creating more trouble than it's worth.

You're lengthening time frames, you're creating extra paperwork. You're getting involved in situations where you don't have the expertise.

So, why?

Isn't there a way that you can do your job, and let other people do their jobs?

I'm pointing the finger, obviously, at you, personally; but, carry the message back, because it's a message that I'm going to sending back in other ways.

You need to get out of the way sometimes, and let these people do their work.

And, getting into situations where, this rate, that rate; justifying positions, justifying methodologies, and dealing with children, you're not expert at that.

You're good at counting money, you're good at putting the money out, you're good at managing the money, but that doesn't mean you're good at doing program, or analyzing program.

And I think you've got to get out of that

business. You're in it too much, at least from what I'm hearing here.

What I said before is, that, when I -- at the opening: We're trying to figure out who -- the way that you have to go, back and forth up, and up and down, and in and out.

I was so -- I mean, I taught school for 20 years. I thought I knew something about this business.

I was on the school board for a number of years. You know, I've been in the legislature for seventeen.

I thought a knew a little bit about some things. But, I was as confused as hell, as to how anything ever gets done.

With appeals, it takes, four years, five years, three years, because somebody's dickering over this, that, and the other thing.

I don't know what you're saving. I really don't.

After a while, you lose the savings for the time lost, and organizations going out of business, that shouldn't, and time wasted. People wasted -- people-time wasted on things that doesn't have to be done.

So, you know, the old adage, "Do more with less"? That's crap. After all, you do less with less.

And I think we're getting to that point in the state government. A lot of different entities and a lot of different agencies have reached a point where they cannot manage what they're supposed to be managing. They just don't have the bodies.

If someone goes on vacation, or someone gets sick, for a week, the work of that person sits on that person's desk for a week. No one is there to pick it up.

You don't have backup anymore in the system, that someone can pass it off because there's two people doing the same work. Now there's, maybe, a half a person doing that work.

So, now, you've got to, under -- now it just sits there, and doesn't get done. That means, they're not going to paid. That means, decisions have to be postponed. Deadlines are not going be met.

So, you know, I think everybody's got to take a look at -- and that includes the executive branch -- has got to take a look at getting out of each other's way, in a lot of ways, and,

legitimately, scaling back, because it's just all too complicated. We're getting too crazy here.

And this work shouldn't be all that difficult to do.

The working with kids is the difficult part. The money should be easy.

The managing of the money should be easy. It's becoming the most complicated thing going, from what I'm hearing. You almost want to get back to the kids. They're simple, in comparison.

So, I think, there's a whole lot of things that have to be looked at.

Perhaps, you people do your thing, come up with some thoughts, some legitimate clean suggestions.

Don't tell me to eliminate the income tax, because that's not going to happen, and you know it.

Don't tell me to eliminate the MTA tax, because you know we're trying to do that; we'd love to do that.

If we can do that, we will, but, I don't think that's the problem at this point in time.

Let's look at procedure, that you have to live with on a day-to-day basis: What can be done, what can be eliminated, that would make your job

simpler, cleaner, and easier to do, without costing a fortune?

Maybe you can save you some money, and some time, and get it done, so that the -- timely payments and the budget, you know, how can we get to this timeliness back?

They shouldn't have to wait.

And they're not alone. I'm telling you, I'm hearing this from agency after agency: We're not getting paid.

You know, I worked in the city of New York for 20 years. Vendors with the City of New York used to build in a delayed-payment factor, and the City knew it. We were paying more for everything, because, in effect, they were loaning us money, because we wouldn't pay them on time.

We were not paying -- the City was not paying anybody on a timely fashion, so the vendors built it in when they put their bids in.

We're creating that. We're creating that here. They're lending us time and money.

That's wrong.

So, we've got to streamline our systems to make it -- you know, make it easier for everybody. And, I think you'll save a lot more money and a lot

more time, that way.

I picked up some notes here, and I like some of the things I heard.

I like the idea of this regional, the three years. It makes some sense.

I don't know about penalizing. You penalize -- you tell me I got a penalty, I'll veto everything. I'll say no to everything.

That eliminates it.

If you tell me, I don't have enough time to get to react to all the claims, I simply knock them all down, in the time frame.

Then what are you going to do?

You're not going to get there by penalizing.

So, we've got to make -- those time frames, there should be time frames, and they should be realistic. And we should be able to work with them, in that sense.

But, you're not going to punish anybody. That doesn't work. You're punishing the same -- it's the same dollar, it comes from the same taxpayer.

So, it's not something, that, you're not going to put anybody in jail for delayed payment, on that basis.

So, I think we have some good ideas.

Regional, I like it.

But, eliminating some of this unnecessary back-and-forth, approval/disapproval that, we can do that.

And, if you can come up with some hard numbers, I'd be really interesting in looking at some really hard numbers, and getting the counties out of this business.

As I said to John before, I think we should be -- if we can do that, I don't see you have a role in it, I don't see you have the expertise in it, I don't see there's any reason for it.

Again, it's just -- and I know why it was done. That's easy. Passing the buck is easy.

JESSICA MORELLI: I'm not offended.

SENATOR MARCELLINO: It's Okay.

SENATOR FLANAGAN: Jessica, she's going to do the "wave" now (indicating).

SENATOR MARCELLINO: That's okay.

I'm not saying it can happen, I'm not saying it's going to happen. But I'm saying, I'm interested in looking at it, because I think it's something that can be done.

I don't think there's any -- I don't think

there's any real -- other than just getting the money off of somebody else's back, it's taking it out of, this pocket, from that pocket.

JESSICA MORELLI: Sure.

SENATOR MARCELLINO: I don't see the gain there.

JESSICA MORELLI: Right.

SENATOR MARCELLINO: So, if we could clean that up, and make life better off for some of the counties, then perhaps we should do that, too, and take a look at it.

But, I thought -- John, thanks for the hearing. I thought this was very informative. Not that it's ending, but I thought it was informative.

I learned a lot.

I learned how little I do know.

I have more questions than I came in with, but, that's okay, that's good.

That's good.

SENATOR FLANAGAN: I actually do have one last question, and I'll use as a backdrop: I have one kid who just got out of college last year, one kid in, and one on the way.

So, when I hear people making reference to the RAs, I'm thinking about the person who is

running the dorm, which may not be that far off.

J. BRAD HERMAN: It's pretty close. It's pretty close.

UNIDENTIFIED SPEAKER: No parties, though.

SENATOR FLANAGAN: Seriously, what is -- what's the role of the RAs?

This a field person from State Ed who is just --

DOUG BAILEY: Yeah, the RA has a -- the RA is the monitoring -- quality assurance monitoring. It's the person, the regional associate, within -- for these schools, it would be within the non-district unit that looks at non- --the school -- they're not the public schools; programs that are not the public schools.

Aside from the Special Acts, they're included in that group.

And they're individuals who are under quality assurance. They go out, they visit, they monitor, they send reports.

MARK SILVERSTEIN: Resources.

PAMELA MADERIOS: They're program only. And they have, no, or very little, understanding of the fiscal components. They just are, program.

So, they know what the regulations require;

that, you need 14 fire extinguishers.

If you don't have 14 fire extinguishers, they'll talk you to about that.

Or, what your CO is looking like.

So, it's purely programmatic, and that's part of the disconnect.

I think everybody agrees, is that, fiscal and program seldom talk. And when they do, they're not speaking the same language.

And, so, program can say: Go out and do this thing.

And then fiscal says: Well, that's great, but I'm not paying for it.

So, that's the program people --

SENATOR FLANAGAN: When I talk to people in small businesses -- and I'm no different than my colleagues -- I'm always asking them, "What's going on?"

I think, probably, one of the groups that's generally despised is the Health Department.

You know, Health Department will come into a restaurant, and there could be 950 things that are going just extremely well.

Well, that "EXIT" sign is a little bit off.

In your experience, the role that that

individual plays, do you feel, like, when they're coming in, they're always look for something? Or, are they, just, pretty straightforward?

RAYMOND SCHIMMER: I think, they've been pretty straightforward, and reasonable.

There are a couple of problems.

The first one is: Their quality varies enormously, from person to person.

So, that they will -- they're like baseball empires, with different strike zones. And you don't know what it's going to be from one to the next.

This one -- this one cares totally about your curriculum.

This one cares totally about your staffing.

So, that varies.

Big problem was, we went for almost ten years with that unit disassembled. And it's only been reassembled in the past five or six years.

As I said earlier, one of -- our biggest problem, and I'm so -- I'm so grateful we had this opportunity today, because we're so tiny in the universe of responsibility that SED has.

I mean, 8,000 kids out of 4 million, it --

we're nothing.

So, it's been very difficult for them to focus on what it is that we have going. And, without the RAs, we were out in the wilderness.

Now we have the RAs, and it's gotten a little better.

But one of the problems is, that their word not their bond. They will tell you, you have a deficiency and you should remediate it.

You pay to remediate it, and two years later, you're not reimbursed.

Now you're in trouble, because you've expended your resource on a promise that didn't get fulfilled.

So, one of the things I'm going to advocate that we write is, either:

That link gets taken out of the process, and we speak directly with Senator Alessi. They either say, yes or no, and we know it at that time;

Or, these RAs be given a little bit more power than they currently have.

But, it is a -- it is a problem: more expensive. We're a small unit. We're exceptional. We can't fit into the larger formulas.

And I think that's at the bottom of a lot of

what we've got going on here.

But, then, I will agree with your earlier comment: I think we do it as well here as it's probably done in the country. The attention to detail that we're able to pay is terrific.

SENATOR FLANAGAN: Thank you.

What I would respectfully ask is, if everyone could forward their appropriate contact, including e-mail information, to our office, we'll share it, certainly, with Senator Marcellino.

And, I expect that we would, soon as we can get tape for everyone, we'll get that out to you.

And, then, put the requests that I specifically made, again, if we could have those by the end of the month, that would be very helpful.

And, does anyone have any -- I'll put it in quotes -- "brief" comments they'd like to offer before we close up?

MARK SILVERSTEIN: Well, the obvious is: Thank You.

And, I've said this you to, Senator: Thank you for doing the homework.

Because, I've been in meetings with people high up in the food chain. They didn't know what you knew, and they were supposed to know.

So, I greatly appreciate that, because you gentlemen have taken that time, and it validates this process.

And, this is a collaborative relationship we have with SED and DOB. It's not personalities. It's a system that's not working.

And there's been a lot of good conversations here, and in the past.

So, I just want to say, for the record, that, the truth is the truth.

BILL WOLFF: I want to share one -- just a fast story about kid on the ground, today.

He's been in our program. He's a 17-year-old kid, African-American, from the capital district, placed in our day-services program by the CSE, on track for graduation.

In late August, his parents decided to move.

This kid has been a pretty good citizen. Probably not in his home.

Let's face that, he's a handful, but, he's doing pretty well with us.

His parents decided that it was time for them to move into an apartment complex that was for seniors, 50 and older. Nobody under 50 can live

there.

He's 17. He's living in a home -- he's living in a shelter right now in Equinox.

Today is his last day that Equinox can provide emergency-shelter housing for this kid.

His parents are refusing to take him back.

We've talked to Child Protective Services, saying: That's not what a parent can do with a 17-year-old youngster. He's a high school kid.

CPS's position is: Yeah, it's reportable, but he's 17. He's really -- we can't process this thing. We can't force the parents to do this back.

That's -- that's the kind of stuff that's going on.

This kid, you know, he's a special ed kid to begin with. We know their graduation rates. He's on track.

Those are the kinds of kids that we're specialists in working with.

We're going to figure something out for that kid. And it's hard to do. That's not going get fixed in this kind of room.

But, the stuff we've been talking about all day, we can work on that stuff. That's our --

that's the stuff that we need you to help with, to get fixed, so these other things, one kid at a time, we touch on.

That's -- that's why all of us are -- that's why there's this, really, dedication to this small eight or ten thousand bunch of kids; because, they've have been -- one of my colleagues says, "There's at least the lost among us."

And that kid, right now, is lost, except for us.

We're trying to figure it out. I don't know exactly what we're going to do. But, no regulation, no State thing.

No; and that's not where the solution is going to come for this kid.

But, that's the stuff that we're up to your eyeballs in all the time. And we need to have the capacity to deal -- to be confident that we can have the rest of the things in place so we can deal with that kind of stuff.

But, that's a real live kid, on the ground, this afternoon. He doesn't know where he's living tomorrow.

He wants to come to school, though.

Like, holy crap.

SENATOR FLANAGAN: Dick?

RICHARD LASKY: I think it was a good meeting, from my perspective, because everybody got most of the issues out on the table, and on how to fix the system.

And it's, the next steps are, whether we can accomplish what we tried to set out here today.

I think some things can be done quickly, related to the timeliness issue, and some of the program stuff, that can be fixed without much effort.

SENATOR FLANAGAN: Thank you.

DOUG BAILEY: You know, I thought it was amazingly positive in listening to you talk about what you've heard. You used the right language. You obviously get it, what we're talking about.

That was very, very encouraging.

I think you mentioned, Senator Flanagan: What could you do, short-term type of thing, and long-term?

And we've talked about the MSAR in a number of the variations that might be done within it, but, help it work. And, we'll work hard on that with everybody, and move forward.

But, a couple of short-term things, you also

spoke, What can we do right now?

And, I think it gets down -- and I apologize to you -- but, if, with SED, you could revisit the issue of no growth, that would be very helpful to us.

I think that's a key issue for people, to see, if, in fact, it's valid, given what the public school systems, and everything, the parameters, and the flexibility, they've been given, if the same issue could be applied to the 853 Special Acts, and the other schools.

And the other piece might be, revisiting that administrative direct-instruction parameters, the 30/70 break, and maybe allow some flexibility; allow for that to be a 100 percent. You can't spend more than 30 on administrative, but, you could use those moneys to improve instruction.

That would prevent some of the tightness of the fiscal climate from directly impacting kids.

SENATOR FLANAGAN: Thank you.

LEE LOUNSBURY: Just, thank you, again, for convening the day.

And, I assure you, that the 853 Coalition is ready to work on its steps. And, we'll get you what you've asked for by the end of the day.

SENATOR FLANAGAN: Okay.

Ray?

RAYMOND SCHIMMER: Again, thank you.

One point we didn't make, that I want to leave you with, is that, there are a whole bunch of other cards leaning on the 853s.

Our ability to operate foster care programs, residential; group-home programs; mental health, with residential treatment facilities, which are a subclass of psychiatric hospital -- all these things depend on having a school where these kids can go and be educated while they're being treated for various things.

So, while this is clearly a State Ed issue, it's a statewide issue across departments as well.

SENATOR FLANAGAN: Thank you.

I just --

You want to --

JESSICA MORELLI: I'm going to do the "wave."

SENATOR FLANAGAN: Okay.

JESSICA MORELLI: I thank you very much for the opportunity to represent the counties.

And, you know, we recognize that these programs are essential, and services to be delivered.

We just don't think that we need to be involved.

And, we're happy to provide with you creative ideas that don't just cost-shift, that are, you know, transitional, and help get counties out of this business.

PAMELA MADERIOS: I've got nothing.

SENATOR FLANAGAN: No pressure.

PAMELA MADERIOS: No pressure.

SENATOR FLANAGAN: Anyone else?

J. BRAD HERMAN: I could echo Ray's comments.

The lack of solution, should we be unsuccessful, on the school side, penetrates the residential programs of so many. And, the implication of the lives, not only of the client, but also of our staffs, is pretty critical.

You know, if, in fact, my school were to fail, which I don't believe it to be, you know, you're looking at 430 jobs, in that situation also.

So, I think the answer that we get, to the best interests of the at-risk kid, on the school side, penetrates so many other circumstances and populations.

And the education solution is absolutely of

critical time.

One only has to look at the number of schools that have closed, and the RANs that you folks had to pay, and the Dormitory Authority bonds you had to make good on, that this solution is of critical timing.

And we appreciate your leadership today.

SENATOR FLANAGAN: Thanks.

Ed?

ED DURIVAGE: I just wanted to say that the zero COLA was not an easy decision for us. Internal -- there's a lot of internal debate. And, we've left it, you know, saying, we need to revisit this next year.

I think this is a helpful start. And -- but the challenge is always going to be for us, affordability, because any great methodology change usually comes with some type of fiscal impact. But, we, certainly -- there's actually people, other than me, on staff, especially at least with ten years of institutional experience.

Hopefully we can tap into those brains, and figure out a way to make it happening. But, we're certainly open to talk.

SENATOR FLANAGAN: Yeah, and I appreciate

that.

I have a couple of observations.

SED, Val Grey, has proven to be terrific to work with.

The new commissioner, I think is -- he's hit the ground running. My interaction with him, he's been delightful to work with on a lot of different things.

And, this is going to sound like it's not a compliment, and it really is: He's an extremely intelligent guy. He is extraordinarily well read, articulate.

So, hopefully, we can have some discussions.

And I think some of her opening comments, in particular, you know, opened the door on some of this things about reconciliation, and things of that nature. And I -- I believe that's going to be important, not only in the short term, but the long term.

And, I spoke with Bob Menga last night. And, he, of course, is always a gentleman to work with, given the difficulty and depth and gravity of the fiscal things we've had to deal with.

But, Senator Marcellino, obviously, takes a deep interest in this.

And, we were laughing, because, when Ken LaValle said he was a teacher, I'm looking at Senator Marcellino: You taught for 20 years, in the city.

But, we do take this stuff seriously. And I am very hopeful that we can come up with some things that will have some short-term benefit and some long-term benefit.

And I don't know -- David, is that you sitting in the back?

DAVID WAKELYN: It sure is.

SENATOR FLANAGAN: Okay.

David Wakelyn is with the Governor's office. He's the deputy secretary for Education.

He and I have spoken on the phone, and we look forward to working with him.

He had some cabinet meeting with the Governor this morning, that, apparently, trumped his ability to get here when we first started.

DAVID WAKELYN: (inaudible.)

SENATOR FLANAGAN: Okay, there you go.

But, appreciate the time, very much.

And, if you have any questions, feel free to just forward them us to. We want to keep you as informed as possible.

So, have a good day, and, thanks for coming.

(All participants say: Thank you.)

(Whereupon, the roundtable, held before the New York State Senate Standing Committee on Education, concluded.)