

PUBLIC HEARING  
before  
SENATE JUDICIARY COMMITTEE  
on

Nomination of Fred G. Burke as Commissioner of Education

Held:  
March 15, 1979  
New Jersey State Museum Auditorium  
Trenton, New Jersey

MEMBERS OF THE COMMITTEE PRESENT:

Senator Martin L. Greenberg, Chairman  
Senator William V. Musto  
Senator Walter N. Sheil  
Senator John F. Russo  
Senator S. Thomas Gagliano

ALSO:

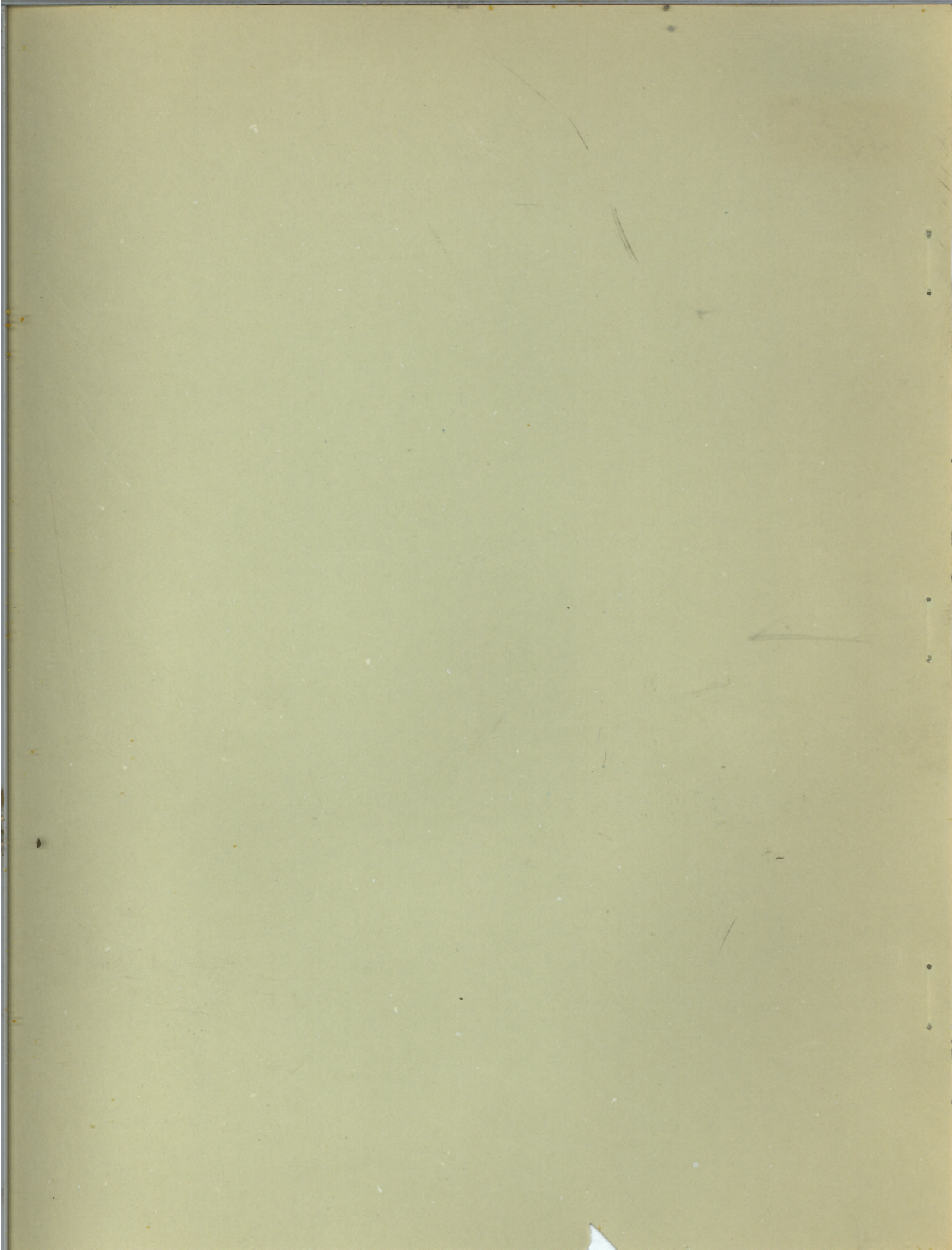
John J. Tumulty, Research Associate  
Office of Legislative Services  
Aide, Senate Judiciary Committee

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Statement of Marie Sheehan Muhler, Assemblywoman, 11th District 20X





SENATOR MARTIN L. GREENBERG (Chairman): This is the initial meeting of the Judiciary Committee of the Senate to consider the nomination of Fred G. Burke to be Commissioner of the Department of Education. In accordance with the normal procedures of this Committee, we are in receipt of Commissioner Burke's questionnaire and the answers thereto. The members of the Committee have that questionnaire as well as the confidential questionnaire, number 2, which is submitted to the Chairman. I can report to the members of the Committee that there is no information contained in questionnaire number 2 which need be brought to the attention of the members of the Committee, but the questionnaire, in any event, will be filed with the aide to the Committee and will be available to Committee members.

Because of the large number of individuals who have indicated a desire to testify in connection with this matter, we have digressed from our normal procedure in two ways. Initially, we have moved the Committee hearing room from the normal committee room, which is located on the second floor of the State House, to this facility, which is larger and can accommodate more people. Secondly, it is apparent to me that we will not be able to conclude the testimony today because of the number of people who wish to testify, so I have scheduled a continuation of this hearing, if the same is necessary - and I believe it will be - for Monday, next Monday, at 9:30 at this same location.

We will commence the proceedings with the testimony of the nominee, Commissioner Burke, who has submitted to us a copy of his prepared text. Commissioner, you are free to either read it to us, or review it, or synopsize it, and then we would appreciate the opportunity to submit questions to you, if there are any by the members of the Committee at this time, and/or - as an alternative - to ask you to return at some time prior to the conclusion of these hearings for such additional questions as the Committee members might have of you, based upon other testimony to be received. Is that agreeable with you?

COMMISSIONER BURKE: That is agreeable.

SENATOR GREENBERG: I would then ask you to proceed by way of either reading or commenting, or synopsizing your statement.

COMMISSIONER FRED G. BURKE: Thank you very much, Mr. Chairman and members of the Committee. I appear before this Committee today to reaffirm my commitment to serve the people of New Jersey as Commissioner of Education. I am very proud of what we have accomplished in New Jersey during my stewardship over the past five years and I am confident that we have laid a very sound foundation from which to address the difficult challenges that lie ahead of us in the '80's.

When I began my tenure as Commissioner, the State - as you know - had just adopted very sweeping changes in the financing and substantive aspects of our education laws. Indeed, a whole new era in education had been established. State aid was distributed so that each district was afforded somewhat, or almost, nearly equal power or ability to support the education of its children, regardless of its local property tax wealth, and a very sophisticated system of planning and monitoring was established to ensure that certain minimum standards of education would be met.

The reforms adopted in Chapter 212 of the Laws of 1975, are bringing positive improvements in our system of public education. However, those reforms did impose a significant level of stress and uncertainty on the members of the educational community as well as the public at large. First, state aid was redistributed. As expected, there was some unhappiness which resulted at the local level. More importantly, the successes as well as the failures of our system of public education

became, for the first time, an open public process.

The State Board of Education was required to establish goals and standards, including uniform State standards of pupil proficiency in the basic skills. Each local district, with public and professional involvement, were required to adopt local goals, objectives and standards consistent with State goals. In addition, every district was also obligated to submit annual reports to the State Department of Education indicating its progress in meeting state and local goals and objectives. The Department of Education was charged with the duty to monitor and evaluate the performance of every school in the State and to provide the Governor and the Legislature with periodic reports on the conditions of education in New Jersey. We have done that. For the first time the Department was required to make known the deficiencies that we found in local districts and then to recommend the measures necessary to improve the educational programs in those districts where deficiencies were found.

Finally, the Commissioner and the State Board are invested with powers to take whatever corrective action is necessary when a district fails to show sufficient progress in meeting its goals and objectives. At the same time that we were involved in this monumental undertaking, difficult and unforeseen economic problems were being experienced not only nationwide but in New Jersey as well. These trying economic conditions caused more and more people to be aware of the uses to which their tax dollars were being put. They discovered that a large portion of their tax dollars goes to education and, correctly, they began to raise questions about whether their investment in education was being managed properly and whether that investment was, indeed, paying educational dividends.

The statutory changes in Chapter 212 and the economic conditions of our society that I alluded to, together, tended to establish a very strong drive to make our public education system accountable, educationally and fiscally.

Acutely aware of these conditions and the of the public attitudes that I have described, I determined that my leadership could best be exercised by avoiding entrenched, inflexible, philosophical positions. Instead, I sought to build consensus among the coalition of forces that shape educational policy. I was convinced - and in retrospect, I believe I was right - that the only way T & E could be implemented effectively would be for the Commissioner to remain open-minded, listen to all views on matters of educational policy - the administrators, the teachers, the school boards, the parents, students, taxpayers, legislators, municipal officials and anyone who cared enough to extend an opinion, and then try to forge agreement, or at least near agreement, among them and in this manner, hopefully no element necessary to educational progress would be totally disaffected, and all of them, perhaps after some dispassionate contemplation, could join together to work for the benefit of our children and for our system of education.

I also determined that the proper role for the Commissioner at the outset of this new era in education was to respect and nurture the tradition of local control. The State does not and should not operate our public schools. The schools should be operated and regulated by locally selected people, not just because of tradition but because it is a superior mode of managing public institutions that must clearly be linked to the family and the community. Broad powers - I would say sweeping powers - are granted to the Commissioner and to the State Board of Education. But, these powers have to be used with sensitive discretion if we are going to succeed. Dramatic gestures by the State usually bring little progress. The best approach to real advancement is to seek the cooperation of local leadership and local community and



support their efforts to correct problems. It is only when this process of consultation and persuasion fails that the Commissioner and/or the State Board should presume to prescribe a solution. Unfortunately, there are occasions when strong measures are necessary and one cannot shy away from asserting responsibility. But, only in the last resort should the State use its powers to usurp the role of local authorities.

I believe that my approach is working. We are moving patiently but orderly and steadfastly toward the improvement of our public schools. Important regulations pursuant to the T & E law were adopted cooperatively and are underway. The monitoring and evaluation of schools is proceeding and is accepted by the vast majority of school administrators and boards. The minimum basic skills program, so controversial a few years ago, is a major force in promoting pupil progress. Deficiencies in local districts are being discovered and remedied by local authorities with limited State intervention. Program budgeting has been initiated and the public is being given further information on where its resources are going. Leadership training, better staff evaluation and improved coordination of programs has occurred, and efficiency measures such as regionalization of services and business improvements are being undertaken.

I am proud of these achievements and while major credit for them belongs to New Jersey educators - an underappreciated group today - I take partial credit for offering the leadership necessary to achieve them.

Of course, the educational system is not trouble-free. Indeed, the T & E monitoring and evaluation system has revealed serious flaws which must be attended to over the next several years. Revelation, by the way, of those flaws is one of the basic purposes of the T & E law.

Greater gains in basics must still be attained. School attendance has to be improved. Violence and vandalism must be abated. Drug and alcoholic use by students must be reduced by cooperation with other agencies within and beyond government. The fiscal and educational problems of declining enrollments must be tackled. Even more efficient uses of available resources must be devised. Teacher education programs and certification standards have to be reexamined to insure that the highest quality people are recruited into the schools. Staff evaluation and inservice activities already required must be vigorously pursued. Greater equalization of state aid and adjustments to the current cap law are needed. Community education programs should be implemented. And, most importantly, even greater participation by the public in the educational system has to be attained.

This is only a partial list of the steps that must be taken in the 1980's. These and other measures are absolutely necessary to restore public confidence which has eroded. This will be a tough job but a rewarding one. This is a difficult time to be a leader in education for serving children may no longer be the public's highest priority. But, it is also a most critical time for education and crucial to the future of our country. I am prepared to make the necessary decisions in this most important time and because I am concerned about results for children, not about winning popularity contests, I will continue to lead by consulting, persuading and using state power only as a last resort. I believe that I can do the job and serve the children and citizens of New Jersey. Thank you very much, Mr. Chairman.

SENATOR GREENBERG: Thank you, Commissioner. Are there any questions of the Commissioner by the members of the Committee? Senator Gagliano.

SENATOR GAGLIANO: Commissioner, I have a news article which appeared in the Star Ledger some time ago -- not some time ago, actually fairly recently.

It is an article by a reporter by the name of Robert J. Braun, who, by the way, I do not think I know. He talks about a case in which a person by the name of Worthington - I believe it is - obtained a contract for consultation purposes, not directly through the State Department of Education but somehow through Burlington County. He was hired through Burlington, paid for somehow by the State, and Mr. Braun takes some of the amounts that were paid and what was done to task. In fact, he asks 15 questions. I don't want to go through that now. Are you familiar with actually the 16 questions that were asked by Mr. Braun in this article?

COMMISSIONER BURKE: Well, I saw the article. There was one in the paper this morning. There are many errors in the articles. Do you want me to comment on this particular one?

SENATOR GAGLIANO: Well, I would appreciate it because I think it is a rather sweeping pronouncement. It doesn't seem right to me that the State Department of Education, if it needs consultant services, should refer it to Burlington County and then after it has been referred to Burlington County, paid for again by the State. It is a rather complicated way to get things done and I would just like an explanation of that.

COMMISSIONER BURKE: Well, if indeed that was the way it was done, it is complicated and possibly a waste of time and energy. The Division of Vocational Education processes approximately 14,000 grants a year. These are all put on the computer. To the best of my knowledge, two of those grants went to a company that Mr. Worthington represents out of the 14,000. The grants are given essentially according to an annual plan, which is prepared and approved by the Vocational Advisory Council, by the Commissioner, by the State Board, and goes to Washington. That plan includes language that encourages local districts that make application to do so in such a manner as to make the kinds of things that they are offering - such as inservice work for teachers, or something of that sort - available to a large number of people, not just a small group. With 611 districts, this would provide service for a very few people.

Mr. Worthington, who was a former Assistant Commissioner of the Education Department before my time--

SENATOR GAGLIANO: How long before your time, by the way?

COMMISSIONER BURKE: Long before my time.

SENATOR GAGLIANO: Long before? Five years, ten years?

COMMISSIONER BURKE: Three or four, I would guess. I am not sure. He was an Assistant U. S. Commissioner of Education and a man, by the way, who has a -- I barely know the man, but he has a good reputation in his field.

He had a proposal to provide staff training in vocational education and was told by the Department of Education that we could not fund these matters. He then, to the best of my knowledge, sought funding for this proposal from Burlington County. There was a proposal which would fit the guidelines of the State plan and the proposal was submitted to us and was approved. He did provide the services. He provided, to the best of my knowledge, six - at least six, not three or four - seminars and these seminars were evaluated and evaluated reasonably well. He contracted to do this with Burlington County Voc-Tec School and the evaluation was done and the money was paid to him. As the vendor, he has the records as to whether or not he took an airplane, or whether or not he charged mileage, or whether or not he put down what his meals were.

I have done two things on the basis of those articles. Normally, we audit - spot audit - these. But, we require every district to have its own audit - as many



of you know. It is when these audits come into us, if there is anything wrong and we find out about it, that we take action. Because of the newspaper articles, we initiated an audit immediately ourselves and at that point in time, the Treasury, with out support, decided that the matter was of such magnitude that they would also get involved. When the Treasury auditors came in, then we pulled our auditors out because I didn't think it was necessary to have two parts of State Government doing the same thing. That auditing process, to the best of my knowledge, is not yet complete. I have had no results. I have not been told what the results are.

I also wrote a letter to the Deputy U. S. Commissioner of Education saying that there had been allegations in the press that the process that we employed to make these grants may have been improper and, therefore, would they please investigate the way we do this. That was about 10 or 12 days ago that I did that. It must be two weeks ago. I asked if they would investigate the manner in which the Department of Vocational Education - the Division of Vocational Education - awards these grants to assure us that they were proper, and if they were improper, to give me an opportunity to make whatever changes they required.

SENATOR GAGLIANO: How was Mr. Worthington's firm paid? Was it paid directly with State funds?

COMMISSIONER BURKE: As one of the 14,000 kinds of grants, Burlington County submitted a proposal to the Division of Vocational Education. That proposal said we would do the following kinds of things: We would provide staff training; so many numbers of seminars; and various kinds of things. Then there was a budget attached to it: It would cost this much for consulting, this much for lunches, this much for transportation -- I don't know what else -- top consultants. They had a number of consultants - nine or ten - that came in from around the country. They provided seminars and travel for these consultants. When the program was approved and the budget was approved and a grant was made to Burlington County Vocational District, they paid Mr. Worthington.

SENATOR GAGLIANO: In other words, you paid - the State paid Burlington County Vocational and they, in turn, paid--

COMMISSIONER BURKE: They applied for a grant from us, yes. And they described what they would do with that grant.

SENATOR GAGLIANO: Mr. Worthington had first asked the Department of Education to pay the grant?

COMMISSIONER BURKE: No, he asked whether the State had funds to fund such a worthy exercise - providing training for I don't know how many hundreds of vocational educators in the State - and was told the State did not have any funds.

Being an Assistant Commissioner for some years, he was obviously aware of the fact that proposals from districts are received and he probably knew how many - 14,000 as I indicated.

SENATOR GAGLIANO: But, isn't it unusual that he would go to Burlington and get Burlington County Vocational Schools to sponsor such a program, which was then open to the entire State?

COMMISSIONER BURKE: Not necessarily.

SENATOR GAGLIANO: If it was a valid program for the entire State, shouldn't it have been given directly by the State Department of Education?

COMMISSIONER BURKE: No. The State plan is prepared and approved, as I said, by the State Board, by the Vocational Education Advisory Council and by the U.S. Government, which has language in it that essentially indicates that the State of New

Jersey will encourage local districts to undertake projects which are beneficial beyond the single county or area in which they are located.

SENATOR GAGLIANO: So that while that is not only acknowledged, it is appreciated. In other words, they would just as soon have school districts do that and then invite people from other school districts from across the State to take part in this?

COMMISSIONER BURKE: That's correct.

SENATOR GAGLIANO: Have there been a great number of these, say, in the past year? How many?

COMMISSIONER BURKE: I don't know.

SENATOR GAGLIANO: Would you say five?

COMMISSIONER BURKE: I really don't know. We, at every opportunity, urge districts. For example, we do this not only in vocational education but we have 611 districts and if there is a project, for example, to provide training for teachers or to provide training for administrators, we take every opportunity we can to extend the participation in those so that the results and the benefits can be enjoyed by a large group of our educators.

SENATOR GAGLIANO: Now, with respect to the article again, I think it is a rather charged article. I would ask you, Commissioner, if you feel that whatever auditing and investigation is being done will be accomplished, that this will be shared with the press and with the legislators.

COMMISSIONER BURKE: Senator, I am very confident that I will do that.

SENATOR GAGLIANO: Because I don't want to take the time today, your time nor the time of all of the people who are here, to ask 16 questions, but I think that the answers to those questions are rather important.

Just basically, with respect to the operation of your department, it would seem to me that the answers ought to be forthcoming.

COMMISSIONER BURKE: Senator, that is the reason why I asked the U.S. Office of Education to send someone to New Jersey to determine if indeed our procedures are proper or not proper.

SENATOR GAGLIANO: Now, the other thing that I wanted to ask you, Mr. Burke, is, I am from Monmouth County and I am just wondering how many times have you been in Monmouth County during your tenure as the Commissioner of Education?

COMMISSIONER BURKE: I don't know, but I think many people have told me that I spend more time in schools and school systems in the State than anybody had in the past. I could find out for you how many times.

SENATOR GAGLIANO: Just give me an idea.

COMMISSIONER BURKE: Oh, I would say eight or ten times. Twelve times, possibly.

SENATOR GAGLIANO: The next thing is, your statement today is a very good statement.

COMMISSIONER BURKE: Thank you.

SENATOR GAGLIANO: I just wonder, because I don't follow all of the newspapers, nor do I follow all of the comments made by our Department Chairmen and Commissioners, has this statement essentially been part of any speech that you have made within the last six months?

COMMISSIONER BURKE: No, it has not.

SENATOR GAGLIANO: Why not?

COMMISSIONER BURKE: Well, usually the speeches I have been asked to give within the last six months have been directed to a specific audience on a



specific topic. I am sure some of the ideas have been incorporated. For example, I spoke recently on violence and vandalism, which is a subject that we are, at this very moment, having a task force meeting on in the Education Building. I have spoken many times on community education. I feel very deeply and strongly about that. I spoke recently on the whole area of public participation in education. But, I have not given this.

SENATOR GAGLIANO: You have not given this as a speech? I think that I personally feel that a lot of people are not too happy with you because you are somewhat distant and you are not necessarily, shall we say, speaking the same language as the parents and the school board members are in many cases. I think that this type of a statement, being excellent, maybe should have been included in some of your comments over the past years because we are desperately in need of leadership and when you speak to us, as members of the New Jersey Senate Judiciary Committee, about such things as violence and vandalism and the problems we have - school attendance, drug and alcohol abuse, the fiscal and educational problems of declining enrollment - these are on the minds of everybody in education today in every town that is giving it any thought at all. And, frankly, as I said, I don't follow all of your comments, but I haven't seen nor heard too much from you about those items. I think that regardless of the outcome of today's hearings and the hearings that might come afterwards, and the vote - or whatever - maybe these are things that you should address. I say that as a very interested observer.

COMMISSIONER BURKE: Thank you very much. I appreciate that.

SENATOR GAGLIANO: The last thing is, on pages 8 and 9 you talk about the erosion of public confidence. What would be your number one choice of something to do as the next Commissioner of Education to restore public confidence in our public schools?

COMMISSIONER BURKE: Senator, I think we should pursue some of the ideas we have spoken of many times - sometimes they are not printed, by the way - on community education and the reinvolvement of the community with the schools and a greater involvement on the part of the parents. I think we should provide an opportunity for parents, particularly at the building level of the school, to get more deeply involved. And, some of the work we are doing in New Brunswick now we foresee as a pilot for other parts of the State in this area.

Also, I think the T & E process, which monitors and makes public deficiencies in the school system, both in terms of the grade scores of youngsters on tests and in terms of the condition of schools, and so on, by being made public will get the public concerned about their schools. I think that for too long we have separated schools from the rest of society. There are a variety of mechanisms: reinvolve the parents; a greater concern at the building level so the parents can be more deeply involved. That is a rather radical statement, but I think if we could involve the parents 10% more in the education of their children than they are at the present time, we could probably do more to improve the basic test scores of youngsters than any other single thing we can do. This is rather difficult to do.

SENATOR GAGLIANO: As an educator, why do you say that is a radical statement?

COMMISSIONER BURKE: It is radical in the sense that we frankly don't know how to do that. Now, we are working on it in many kinds of ways.

SENATOR GAGLIANO: Well, I think that is rather important. I don't think it should be radical, except that maybe educators haven't been doing everything they should have done in order to get to the parents and to, shall we say, increase public awareness and get those parents to have their children do more in school.

COMMISSIONER BURKE: I think that is true. I think the activities that have occurred, particularly in the last two years, are indicative of what can be done and the directions we have to go in.

SENATOR GAGLIANO: Have you any idea? You say you don't know which way to go at this point, but do you have any idea on what might be the best approach to get the parents involved?

COMMISSIONER BURKE: No, I think we do know which way to go. I think that we can provide greater involvement of parents at the building level and also explain to them the administration of our educational system at the building level - because the school building, in many ways, the school house has always been traditionally, in this country, a place where parents reacted with students and with teachers. Now, there are a variety of ways of doing this - that is to, for example, work in the direction of councils at the building level, advisory kinds of councils.

Another way is to further community education, community education facilities, where you combine a variety of kinds of delivery of public services, not only education but an involvement of parents with the children in a community center activity.

We can do it also, of course, in education in the schools themselves, in terms of social studies, promoting community involvement and sense of citizenship. In some areas this is relatively easy but in areas where the family structure is undergoing radical changes, it is difficult to get that kind of involvement. But, I think it is imperative that we continue in that direction.

SENATOR GAGLIANO: What would be your thoughts, Commissioner, on cutting down on violence and vandalism in the schools? Is that again related to parents?

COMMISSIONER BURKE: We have a task force which is just completing this work. We met recently with the Chief Justice and a group of his colleagues in juvenile justice. He has indicated to me his intent to set up a parallel group to work with us. We have a large number of recommendations, some that would require legislation, which we could implement through the State Board Regulations. They involve a variety of activities. For example, better reporting mechanisms and the development of alternative modes of dealing with youngsters who are responsible - the small minority of youngsters that are responsible for the violence and vandalism. At the present time, one of the problems is that short of incarcerating these young people, there is little that can be done other than to turn them back into the schools. We had some very important discussions with the Chief Justice and Juvenile Justice people as to, "Are there other alternatives? Can we find alternatives, for example, for those youngsters who create acts of violence and vandalism, short of incarcerating them in such a fashion that what we do is to turn them into hardened criminals"?

That is one direction that we are moving in and we will have some recommendations in the very near future as to alternatives to the present system.

SENATOR GAGLIANO: Commissioner, isn't it a matter, to a great extent, of teaching youngsters, at the earliest age possible, respect for others and respect for other persons' properties?

COMMISSIONER BURKE: I think that is true and the institutions which usually did that in American society are not doing as well as they used to. I am referring to the family, the church, the community, the neighborhoods, to the extended family and the schools.

SENATOR GAGLIANO: All right. So, you find yourself with that problem - yourself meaning collectively the school systems of the state and the nation? What



are the schools doing initially when the youngster first walks into the kindergarten? Is there a program to teach respect for property and respect for others in the classroom?

COMMISSIONER BURKE: If you check the state goals, for example, they indicate what should occur in the schools and then in local district goals you will find, almost invariably, there is reference to the need for that kind of activity to occur. Does it always occur as well as it should? No. Does it usually occur? I think it does. It depends upon the quality of the teacher, the leadership of the board, and the general environment that the education occurs in.

I think that by and large in the social studies curriculum in early grades there is an attempt to develop an understanding and appreciation for other people's rights, and so on. But, some of our major problems deal with the education that occurs the other ten hours or so that youngster is awake, which we have no control over -- for example the violence and vandalism on television, or the other media's selective reporting on that kind of activity.

SENATOR GAGLIANO: One last question, Commissioner. The education budget in New Jersey is pretty heavy. If you can answer with a yes or a no, do you think that the taxpayers of New Jersey are getting their money's worth with respect to education?

COMMISSIONER BURKE: Can I answer that in about four words?

SENATOR GAGLIANO: Any way you want.

COMMISSIONER BURKE: All right. I think they are getting their money's worth much more so today than they were five and ten years ago.

SENATOR GAGLIANO: Thank you, Mr. Chairman, I have no other questions of this witness.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: I have no questions at this time.

SENATOR GREENBERG: Yes, the Commissioner will be back before us for those who wish to withhold questions, but if anyone does have any further questions at this point, please feel free. Senator Russo.

SENATOR RUSSO: Yes, I have a few questions, Mr. Chairman. Commissioner, I want to talk about two things, the cap leeway exemptions and the declining enrollments in the schools - primary and secondary, particularly primary. I am not going to go into the day-by-day of you in your office because I rely heavily upon the Chairman of the Assembly Education Committee, Assemblyman Newman. Frankly, I consider him the expert on education in the Legislature. He is going to talk, so we will have to wait and hear what he says about the day-to-day activities.

But, with regard to cap leeway exemptions-- I ask these questions primarily, I guess, as a way of giving you a forum to explain, rather than an overall criticism that outweighs perhaps many good things. In the past several years, prior to this year, you were rather liberal in granting -- I suppose that is a relative term, some would say you were rather liberal -- cap leeway exemptions to the districts. By my standards, and perhaps it is because I believe strongly in the caps, I felt you were rather liberal. This past year, you were rather conservative and I applaud that. But, let me put it straight to you, was this fiscal conservatism of this year a result of your attitude towards those exemptions or - because I am sure this is in the minds of some - was it a reflection of the fact that it is the year before your reappointment came up?

COMMISSIONER BURKE: If you check the past three years, you will find that rather than having a decreasing straight line, the first year the amount of money

requested - I don't have the data with me but I am fairly familiar with it - in the cap waiver and that granted was fairly close to what occurred this year. In the intervening year, which was last year, the amount requested was much higher. There were many more districts requesting this. There was a reason for this. You know that the permissive cap increase the districts had is determined by changes in the property valuation in the state and if the property values go up radically then the permissive cap increase goes up. The higher the permissive cap is, the less likely a district is to apply for a cap waiver. So, that has also fluctuated.

The sixty fifth percentile this year was added this year by me as a criteria. I instructed the county superintendents that if a district was spending beyond the sixty fifth percentile, that only under extraordinary circumstances would a cap waiver be permitted. Now, I did this for the following reasons: Analysis of the data over the past year or so indicated that the T & E law, based on the Botter decision, which was designed explicitly to narrow the gap between high spending and low spending districts, was not in fact doing so. One of the reasons for this was that high spending districts, at the upper end of the level - districts which, by the way, also tend to be those with declining enrollments; something you raised - were inclined to ask for cap waivers and they have received them in the past, relatively.

Districts at the lower spending spectrum were spending at cap or even below cap. As a consequence, the gap between high spending and low spending districts - which was the reason that led us into court - was getting worse rather than better. Also, the language in the law and in the Education Committee language, which went to the Legislature and which led to the passage of Public Law 212, made it quite clear that the state would not support, through equalization, expenditures of any district that spent beyond the sixty fifth percentile. If they wanted to spend beyond that, the state would not support it. The language indicated that the reason for this was that if you spend at that level or beyond, there was an assumption of thorough and efficient. I assume that if the Legislature gave me the authority to grant cap waivers on the basis of whether a district was thorough and efficient, the assumption was also there that I would make some determination as to thorough and efficient. Whatever that determination is, it has to be the same in your county as it is, for example, in the northern part of the state, or in Cumberland.

We have the cap waivers in such magnitude that we work them through the county superintendent's office first. Therefore, the guidelines which I give the county superintendents in order to process a request for a cap waiver has to be the same and this is why, for example, that I said given the fact that the gap between poor and rich is growing and not getting smaller and given the fact that I interpret the law to give me the authority to determine - for cap waiver purposes anyway - thorough and efficient and that my job is to narrow that gap, which is implicit in the interpretation of the Constitution, that I would be disinclined to give a cap waiver to those districts that were spending at that level.

At the same time, we are also attempting to encourage low spending districts to move closer to their cap limit.

There are two problems that you touched on which will have to be addressed and we, at the State Board, will make some recommendations by the end of the year to the Legislature. One is in terms of maintenance of effort on low spending districts and the other is to take into consideration the impact of declining enrollments on caps.

SENATOR RUSSO: Let me ask you a question that really deals with your philosophy on educational spending. Based upon the present cap law that we have

and how it has been working, what is your own personal attitude toward the cap on education?

COMMISSIONER BURKE: I think that a limit on public expenditure, not only in education but generally, is required in the times in which we live. I think that the vitality of our entire political system and its future depends upon that right now in the history of this country.

The cap law for education was put together in a hurry, as I am sure you will remember. There are some aspects of it which are discriminatory and I have recommended changes. It discriminates against certain types of school districts as opposed to other kinds of districts.

SENATOR RUSSO: Commissioner, perhaps I am wrong, but I have sort of taken the attitude that once we start tampering with the cap law, even in some good areas, that we may open the flood gates, perhaps. That applies, in all fairness, more to the municipal, county and state caps than educational caps. But, what about that concern? Might we not be better off leaving it the way it is, rather than start opening the door to a formula change and adjustments that might open the floodgates?

COMMISSIONER BURKE: No, I don't agree with you. I think there is a danger there and I would have to accept the fact that that is a problem and as one structure is opening that pandora's box, one ought to have that in mind, to minimize that likelihood.

I am convinced that if permitted to continue on as they are, without changes in the way in which they distinguish between various school systems, and so on, the existing cap laws would do significant damage to education in our state.

SENATOR RUSSO: But, you would not favor doing away with the concept at all?

COMMISSIONER BURKE: No, I would not. I think that what I am talking about are improvements in a fundamental law which I support.

SENATOR RUSSO: In 1973, I attempted to put together a tax reform paper and at that time one of the statistics that I relied upon significantly was a projection that by the early 1980's we would be experiencing a 15% decline in enrollment in primary education. Has that statistic been borne out?

COMMISSIONER BURKE: I don't have that here, but it is within the ballpark.

SENATOR RUSSO: I am sure-- And, incidentally, I don't at all make the point that we are spending too much on education, I only make the point that we should not spend any more than we have to and maybe not any more than we are spending. But, with that decline developing - and apparently the statistics are accurate, as we would expect them to be - what can the taxpayer of this state look forward to and what are your views on it as to any relief, bearing in mind of course inflation every year - but, subject to that - in their burden on educational spending, if in fact that decline continues, as we know it will because we know what the birth rate is and so forth? Is there any hope that we can give to the taxpayer with regard to relief in education, or - let me add to that to give you an opportunity to talk about it - will it develop, as some critics claim it will, that we will just find new ways to spend the money; we will reduce pupil-teacher enrollment, and so forth? What are your views on that and what do you project for the future with regard to that?

COMMISSIONER BURKE: I think that declining enrollments having an impact on per pupil expenditure is relatively inelastic, whereas declining enrollment tends to be elastic. One does not trigger the other, necessarily. So, one of the problems



we have, of course, is that if you have a geometry class - one geometry class - in a high school and student enrollment goes down from, let's say, 18 to 12 because of declining enrollment, you still have to have that geometry teacher. That is one of the kinds of problems. But, I wouldn't say that that is the entire problem.

School systems that hire teachers and administrators are disinclined, generally, to cut back on staff. They are more inclined to try to improve the quality of education with that staff. I think that is the genuine philosophy. I also think it reflects a kind of humanism that people's jobs are at stake.

We are seeing a decline in staff, but not anywhere near in proportion to the decline in enrollment. I think this is one of the things which motivated the Governor, for example, in his request to the State Board recently that they look very carefully at the ratio of educators to young people and come forward with some recommendations as to what that ought to be and how they ought to be involved in funding. We are in the process of doing that at the present time.

So, I think there is a combination of things. One is, continued declining enrollments, which we continue to project, by the way, and the catch-up - the consolidation of schools and school districts as a consequence of that. All of these things work together, plus the impetus of the Legislature, with questions like yours and like the Governor's, will work to relate more closely a decline in expenditure more closely proportionate to the decline in student enrollment in the years to come.

SENATOR RUSSO: Thank you, Commissioner. That is all I have for now, Mr. Chairman.

SENATOR GREENBERG: Thank you Senator. Senator Sheil.

SENATOR SHEIL: I have just two comments. I too was concerned regarding the comments of Senator Gagliano on the Burlington County situation. I would like to report that I contacted Commissioner Burke and I am very satisfied that the Commissioner acted properly and in the best interest of the students and the parents.

My final comment is in reference to something else Senator Gagliano said. He indicated that his findings were that Commissioner Burke was rather distant and didn't speak the language of parents, students, and boards of education. In my dealings with boards of education and superintendents and parents - and citizens at large - I have found quite the contrary. Commissioner Burke is very close to the situation and does speak the language of parents, students and boards of education.

SENATOR GAGLIANO: May I have one more question, please Senator Greenberg?

SENATOR GREENBERG: One.

SENATOR GAGLIANO: Mr. Burke, what is your position with respect to whether or not teachers should have the right to strike?

COMMISSIONER BURKE: I do not believe that at the present time the teachers in New Jersey should have the right to strike. I do believe, through, that last best offer, binding arbitration, is an approach which I support.

SENATOR GAGLIANO: So, you do not support the right to strike for teachers?

COMMISSIONER BURKE: I do not.

SENATOR GAGLIANO: I advocated, when I was Commissioner of Education in Rhode Island -- I put forward a proposal wherein teachers would have a limited right to strike. Those teachers would lose a day's pay, which could not be made up, for every day they were on strike and the boards of education would lose state aid equivalent to the salary of those teachers. It is significant to note that both the teacher's organization and the school boards association opposed that idea.

SENATOR GAGLIANO: Thank you. I'm sorry it was more than one question, Marty. I apologize for that.

SENATOR GREENBERG: That's all right. We had a similar discussion - the Commissioner and I - five years ago, I think, when you were before the Judiciary Committee for the first time. I don't think it is particularly relevant because I don't think that the Legislature of this State will ever seriously consider such an alternative. But, my recollection is that your position at that time was the same as it is now.

COMMISSIONER BURKE: As a matter of fact, it is a matter of record. I provided this in writing a year and one-half ago to the PERC Study Commission that was working on this.

SENATOR GREENBERG: Commissioner, I want to thank you for coming here this morning. We will be seeing you again before these hearings conclude. In the interim, you are welcome to remain or go about your business, which you have just described to us. Perhaps you can leave some of the members of your staff here so that you have some familiarity with what is happening. In addition, we are recording this testimony and hope to have it transcribed for the perusal of anyone who wishes to see it before the conclusion of these hearings.

COMMISSIONER BURKE: Thank you very much.

SENATOR GREENBERG: Thank you very much, Commissioner.

I might add that there is another Senator at the table who is not a member of the Senate Judiciary Committee but because of the fact that this is St. Patrick's week, we took a vote and decided that Pat Dodd could sit here if he didn't ask any questions. But, now Senator Pat Dodd, who is the only individual I promised would have an opportunity to speak first, will have that opportunity. Pat, if you would be kind enough, you can either sit here or sit there (indicating witness seat), whichever you prefer. (applause) I don't know whether that was for me, or for Pat Dodd, but I thank you for both of us. I think I know who it was for.

SENATOR DODD: I think it is for your green tie.

SENATOR GREENBERG: It is for my green tie. Senator Dodd, has submitted to us and to the press copies of a statement on this subject. You also, Senator, are free to either read it or comment upon it, whichever you deem proper.

SENATOR FRANK J. DODD: I would like to make some comments from the statement, Mr. Chairman. I hope I will be brief. Mr. Chairman, ladies and gentlemen, the Senate Judiciary Committee is deliberating and the entire Senate will be considering the issue of whether or not to reappoint Fred Burke to a second term as Commissioner of Education.

I intend to vote no on that issue, and I believe that the Judiciary Committee, the Senate, and my constituents deserve to know why.

We will be voting on Mr. Burke, but the issue before us is, in fact, nothing less than the future of education in New Jersey. If we vote in favor of Mr. Burke, we are voting in favor of his stewardship of education in the future. I cannot do that, for I do not believe that Mr. Burke has the capacity to act decisively to confront and direct that future. It is only in the context of the future that we can understand the implications of our actions today. The changes in public policy issues in education will be so radical that it is tempting to cling to the known and the familiar in the hope that by ignoring it we can avoid it.

What concerns me is something that is much more clearly defined -- projected public school enrollments over the next decade.

The number of pupils in our schools is declining. We have already

experienced a 5% decrease from the 1972-1973 peak years, a loss of about 75,000 pupils. That loss is now accelerating at about 40,000 per year. This change is uneven. Some districts are still growing, especially in Ocean County. Other districts, about one quarter of them, have lost 20% or more of their total enrollment to date.

For example: Livingston has fallen from 7,923 in 1972 to 5,950 this year. Their kindergarten class is half the size of their senior graduating class. Newark, Cherry Hill and Woodbridge -- all the same. There are very, very dramatic decreases.

We acknowledge the fact of declining enrollment is an annual statistical ritual. It is time we faced its real implications for our public school system.

Clearly, we will be closing schools. We already are. It is a simple concept. But, how do we decide which school to close? More pointedly, how do we decide whose school to close? How do we help the community understand, and cooperate and adjust to losing a school, or more likely, several schools? How do we help a community understand and accept the need to completely reassess its desegregation plan when it closes down a school? What do we do with an empty school? Do we tear them down? Do we sell them? Do we board them up as a permanent memorial to changing times?

In some ways, declining enrollment provides us with a positive opportunity to serve new constituencies, to provide better facilities for the handicapped and to expand vocational education. It will take a great deal of planning and imagination to help districts, municipalities and communities as more and more they must close schools.

I believe we should have acted already. What we should have on hand is a plan for every district so that parents, teachers, and communities can make reasonable assessments of their future.

What we do have is a declining enrollment project in the Department of Education with a staff of one.

Whether we are optimistic or pessimistic about the future, the fact remains that we are at a point of crisis in public education, a crisis different from any in our recent past.

We must have strong, decisive leadership so that we can guide events in a positive manner and not be overwhelmed by them.

I do not question that fact that Commissioner Burke is an honest, decent, and dedicated man and I find my present role of opposition to his reappointment distasteful. However, we cannot afford the luxury of this type of kindness. We do need honesty and decency, but we also desperately need leadership. And, this is a quality that simply has not been demonstrated over the past five years.

Virtually none of the major initiatives in education have come from the Department. Basic skills testing was a legislative mandate, enacted over his opposition. Teacher Evaluation was adopted by the Department in response to proposed action by the Assembly Education Committee. And, after a year, they still seem uncertain about what regulations they did adopt.

The activities of the Newman Commission have prompted a directive to the State Board of Examiners to look into teacher certification. Problems of vandalism, violence and labor disputes are all being addressed by the Legislature in the absence of proposals from the Department of Education. The Governor has several times sought a policy on school consolidation without response. He has most recently asked for a review of student-teacher ratios, which now stand at 13.6 to 1.

I believe we should have acted already. We have to learn to anticipate



and to act, not to react.

Legislators, Governors, and judges should not be charged with the development of our educational policy. We have a Commissioner and a State Board to guide us, to propose policies which are socially relevant and educationally sound. We act today in response to their silence. That silence has gone on too long.

We cannot let this moment pass. If we in the Senate are silent in our consent, we will be guilty of violating one of the most awesome and serious responsibilities. What we should do is issue our own call for a search committee with broad public representation to seek the kind of Commissioner of Education who can take the initiative, seize this moment as an opportunity for reform, who can anticipate and plan and lead.

I most strongly urge you to reject this nomination and issue that call. If we do not, then we too will be responsible for abandoning our future to silence and indifference and neglect.

With respect to T & E, the law requires each district to submit an annual report outlining goals, objectives, basic skill improvement plans, plans for professional development, and so on. In addition, there is an annual monitoring and evaluation process. The result is supposed to be school improvement. The Commissioner is supposed to review these reports and evaluations and determine if a district is making sufficient progress. If it is not, the Commissioner is supposed to advise the school and demand a remedial plan: Chapter 18A:7A-14. To date, the list of approved or disapproved school districts does not exist.

With respect to compensatory education, the T & E law provides for a state compensatory education fund to assist pupils who are educationally disadvantaged. The key element in determining the need for these funds is a performance on minimum basic skills test. Approximately \$67 million in state funds were available for "comp-ed". In addition, there is federal money available for this purpose. Finally, there is \$1.2 million for compensatory ed research and development. In September, 1978, the final report of the Minimum Basic Skills Advisory Committee was submitted to the State Board of Ed. The report criticized remedial programs of the Department of Ed for a fragmented management structure, a general lack of guidance, a lack of comprehensive information, confusion, misunderstanding, and resentment. The report stated - and I quote - "Serious problems do exist in New Jersey's remedial education program and unless extraordinary measures are employed promptly, we will see general conditions worsen and we may well see larger urban districts fall into virtually irreversable depths."

My own review of the program on the expenditure of \$236,000 was, it was spent in new grants to benefit middle management, principals and teachers in such essential areas, intrastaff communication and coordination - whatever that means - consensual planning and assessment process, and the upgrading of an administrator's ability to assist teachers on the secondary level -- and so on, and so on.

Special Education -- The Handicapped Bond issue: In 1973 we passed a bond issue for \$25 million. As of December, 1978, the total amount of that \$25 million, which was actually expended, was \$4.7 million, of which \$4.786 was spent on the Katzenbach School. Nine thousand dollars went to a facility in Bergen County. Another approximately two and one-half million was appropriated for that Bergen facility, but not actually expended. The unappropriated balance of that Bond Issue is, therefore, \$17.6 million. The regional centers do not exist and given the rising cost and deteriorating value of the dollar, the remaining \$17 million will never be sufficient to build those additional centers.

What do the people of New Jersey believe when we float these bond issues and plead with them and tell them that we desperately need the money for these projects and here, how many years later, we haven't touched it?

Teacher Evaluation -- The Department spent two years developing guidelines for the evaluation of tenured teachers. The initial recommendation included the use of student's progress as one element in the evaluation process. The Commissioner did not recommend this. The State Board insisted on its inclusion. The NJEA is in court now opposing it. This went to the Department issued guidelines for the evaluation of tenured teachers. The State Board determined that the guidelines did not conform to the rules and "regs" it had adopted and demanded the withdrawal and revision of those guidelines. On March 7th, Commissioner Burke again backed off. The State Board had adopted regulations for the certification of bi-lingual teachers. These regulations required such teachers to be able to pass a test in English. I don't think that is too difficult. The deadline for these tests had already been extended twice and, again, on March 7th, Commissioner Burke gave those bi-lingual teachers who failed the English test the right to continue teaching under emergency certificates.

Now, gentlemen, what we are talking about today is the confirmation of the leadership over the last five years in education. A confirmation is, "yes, we are satisfied with the educational system in this State the way it is." That scares me. If we are going to make that determination, that frightens me very much. If we can't make education better than the way we have been going, if indeed it can't be done, let's at least have the honesty to admit, "this is it; this is the best we can do and we can't do any better." But, let's not hide it and let's not cover it up. We owe the people of New Jersey -- the owe the seven and one-half million residents of this State more. Let's at least try. If, indeed, you are satisfied with the way things have been going, this Committee will release that nomination favorably and chances are the Senate will pass it.

We are talking about expenditures. That could be secondary. I am primarily concerned with the best possible education that we can produce in this State. We also have to administer about \$5 million in educational funds per year. We are the third highest in the nation. I would like to be proud of that. But, I am not proud of the fact that we are producing, especially in our urban areas, children that cannot read, cannot write, and cannot function in a contemporary society. That is what disturbs me. (applause)

Mr. Chairman, and members of the Committee, I thank you for this opportunity.

SENATOR GREENBERG: Senator Dodd, would you mind taking the seat for a second?

I would respectfully request that the people in the auditorium refrain from either supporting or opposing testimony that is given today. The rules of this Committee are similar to the rules of the Senate in the sense that the Committee members will deliberate without being subjected to applause or negative comment. We would would like to conduct these proceedings in accordance with those rules, and I would appreciate your cooperation.

Senator, I am sure that you would agree with the statement that the educational problems confronted in the State of New Jersey are to a greater or lesser extent existent in other states of this Union at the present time? I merely wanted to call you back to the chair for a moment to point something out and to see whether you agree with my reaction - at least speaking for myself - to a statement you

made. You said that you view the ultimate question to be determined initially by this Committee and then if it approves, by the Senate as a whole, the question of whether or not we are satisfied with the educational system in the State of New Jersey today. If, in fact, that is the question that you think must ultimately be resolved, then I respectfully disagree -- for myself.

I don't think there is an individual in this room, nor in the Senate or the Assembly, who is satisfied with the quality of education in the State of New Jersey today. Rather, I think the question to be resolved is whether or not we are satisfied with the stewardship which has been offered by the present Commissioner, who is now a nominee for a new term. I would like your thoughts on that subject. If I have not misunderstood you, I wonder whether or not you agree with me?

SENATOR DODD: This Committee has a responsibility. Our Senate President, I read last week, felt that the Governor should have any nominee that he so chooses. Now, if that be the case, I would expect a bill to be introduced - a Constitutional Amendment - to relieve the Senate of the responsibility of advise and consent. I would expect that.

SENATOR GREENBERG: Was that statement, incidentally, made by a member of this Committee?

SENATOR DODD: It was made by our Senate President.

SENATOR GREENBERG: I see. He does not serve on this Committee.

SENATOR DODD: Well, he serves as a general--

SENATOR GREENBERG: (interrupting) And, he will not vote on this Committee.

SENATOR DODD: Indeed, the Committee is charged with the responsibility of determining whether or not a nominee should be issued the same as a judicial appointment. But, this, more than any other appointment before the Judiciary Committee, is the key to the future of New Jersey. It is how we produce the children out of our school systems that will determine the quality of life in this State in years to come and that is an awesome responsibility, Mr. Chairman, that is placed on you and your colleagues that serve on this Committee. This is where it initiates. The full Senate, in their deliberations, will make another broader determination. But, you, sir, have the first responsibility.

SENATOR GREENBERG: Senator Dodd, I want to thank you on behalf of the Committee for the thoughtful presentation you have made today and for having circularized us with copies of it in advance. I especially want to thank you for the high plane of those comments and for the substance of them without necessarily agreeing or disagreeing with the content at this moment.

If you would just bear with me for one second, I would like to see whether any other Senators have any other questions of you. Senator Gagliano.

SENATOR GAGLIANO: I have no questions. I think it was an excellent statement.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: I have no questions, except that so far, as I sit on this Committee - and I have withheld asking any questions - I have heard some very sound statements that I agree with. I think we all feel we can do better in education. We are considering the nomination of a gentleman today and if we are to be critical of that nomination, I would like it pinpointed more. I don't think we pinpoint any criticisms by saying we want to improve our educational system, and then by saying, "Let's change the Commissioner."

I think your statement was excellent. I would agree with it, except that I don't relate it at all to the Commissioner we now have.



SENATOR DODD: If I may respond?

SENATOR GREENBERG: Senator Dodd.

SENATOR DODD: I just went over part of the litany of the major changes in education over the last five years, the bulk of which had been changed by the Legislature, the Governor and the courts. This is not a way to run our educational system. We have a Department. We expend huge amounts of money in that Department for leadership. And, if you will consult your Legislative Index, I would say that education by far leads the list of bills introduced wanting change. And, I am not talking now of just local what I may want for my district and what you may want for your district. I am talking about philosophical changes in our educational policy. I am not saying they are all right or all wrong either, but the fact that the Legislature must, out of frustration perhaps, give the leadership in education -- that is not our charge.

The courts--

SENATOR MUSTO: Well, my response there, Pat, is that you can't stop a Legislature from acting; that is the duty of any Legislature.

SENATOR DODD: Not on what should be routine policy procedures, Billy. That is my objection.

SENATOR MUSTO: I still don't get the point of the criticism of the Commissioner of Education in that regard. I think he has been very cooperative in that area. I am not here to pre-judge. You, or anyone else, can have an opinion, but I would like something said here that would relate to the actions of the Commissioner, as a Commissioner of Education.

You mentioned in your statement that he granted emergency certificates for bi-lingual teachers? That is in your statement, for example.

SENATOR DODD: This affects your district quite dramatically, Senator Musto.

SENATOR MUSTO: Of course it does.

SENATOR DODD: We have bi-lingual teachers that we don't know whether they can teach or not because some can't even speak English. Now, maybe that is the way that is intended to be, but if we have American citizens who are being taught bi-lingual, Spanish and English, wouldn't it be nice if there were also a teacher who spoke both languages? Now, this has been going on and on. We have had three delays and I am sure there are going to be more in the future.

SENATOR MUSTO: I only point out again, Pat, that your opinion is listened to. It may have merit, but if you come to Union City and West New York and Hoboken, you will find out that without cooperation in that regard from the Commissioner of Education, we would not have the excellent programs we have.

SENATOR DODD: I would like to think more that it was the Mayor who is responsible for that.

SENATOR MUSTO: I thank you for that. But, I do want to be fair. I know your intentions are excellent. I have the highest respect for you, as you know. We are considering a very serious thing here, but I would like to be fair in the sense that the presentations we get are more pointed to the actions of the Commissioner of Education.

SENATOR DODD: Senator Musto, we have had to pass bills in the Legislature to find out the extent of violence in our school system because there has been a void -- there has been a silence: "Keep the lid on. We have no problems. The school systems are great." It took a grand jury in Essex County to tell us that 70% and 80% of our student body, which I assume goes statewide, are using drugs in the schools. We had to find that out from a Grand Jury. Why can't we have that from

our Department? Tell us. Admit we have a problem and let's go on and work on it together. But, don't pretend that everything is okay. What about our test scores, where we had to find out that our test scores "looked all right"? You know, they weren't too good and they weren't too bad. But, then we found out that the equation that -- I won't go into the details, but if you didn't make up a certain percentage, you weren't even counted in the equation. We have to find these things out by surprise. That is not a way to run a store.

SENATOR MUSTO: I can't agree with what is wrong and what is right, Pat. But, certainly, if you take a Department, like Education - realizing all of the departments that are there; and I have looked at them for 30 years in the State Legislature - I don't know of one that has ever been able to look at that system we have and say that that one man, that Commissioner of Education, is responsible for it. It is the responsibility of church and family and legislators and the Governor -- all of us together. We have to pinpoint it and to put the responsibility on one man is way beyond my comprehension.

SENATOR DODD: That goes with the job. (applause)

SENATOR MUSTO: It goes with all jobs, and it goes with that mayor you mentioned before too. And, it goes with the legislators from that district. And, it goes with the judge. It goes with the law enforcement people. It doesn't only go with the one job. No man, no one position, can handle all of that. He can't raise the child; he can't send him to church; he can't be in that classroom. He can supervise it and he can give it the leadership, to the best of his ability. And, it is that leadership that I believe is in question today. I appreciate your remarks in that regard. All I ask for is for that to be pinpointed, not the things that he has absolutely no control over.

SENATOR DODD: Perhaps one dramatic figure - and I wasn't going to use this today because there will be more debate on this - is, our private schools in our State are having boom years. Now, there is always a certain segment in our society that will always send their children to private schools, whether they be religious or whatever. But, to have waiting lists now of years long to get into private schools from urban areas - now I am talking about the parents of children in the poorest sections of my district, Billy, who cannot afford to send their children to private schools - that is the testimony. I think that is the most dramatic testimony against our public school system. That speaks--

SENATOR MUSTO: Won't you admit that the condition you are talking about - as Senator Greenberg pointed out - exists all over the country? It is a serious problem and a challenging problem.

SENATOR DODD: At least admit that we have a problem. This is my major problem with the Department: "Everything is fine; we have no problems." Only recently, in the last day or so, I understand, there has been mention of: "Well, we have a few problems."

SENATOR MUSTO: Well, I listened to the Commissioner's speech here today and Senator Gagliano asked why he hadn't said these things before - and, again, I don't want to pre-judge, but I have heard not only this Commissioner, but I have heard every Commissioner we have ever had in this State talk on those subjects for 30 years and talk on them well. So, there is nothing new in that. I think they know the problem. I think they all do, it is just that type of challenging problem that is a challenge for everybody in this audience, a challenge for everybody up here, and it is a challenge for the whole world, in fact.

SENATOR DODD: But, we can only begin to address that challenge with the leadership in that field that it is charged with, Billy.

SENATOR MUSTO: I agree with that and, again, I repeat - you are well-intentioned and I hope I am well-intentioned - I am pinpointing whether or not that leadership is lacking. That is what I would like to hear from the witnesses who come before us.

SENATOR GREENBERG: And, that, Senator, was my point: The issue is the quality of leadership and I think we all agree on that, as the issue.

Bear with me for one more second. Senator Russo, any questions?

SENATOR RUSSO: No questions.

SENATOR GREENBERG: Senator Sheil, do you have any questions?

SENATOR SHEIL: I would just like to voice the same concern as Senator Musto has. I endorse what he said.

SENATOR GREENBERG: Senator Dodd, again, our deepest thanks for your time and for your interest and for what I consider to be an enlightening and very thoughtful presentation.

SENATOR DODD: Thank you very much.

SENATOR GREENBERG: Thank you.

SENATOR GREENBERG: Good morning, Assemblyman Newman. We have a statement which I assume you prepared.

ASSEMBLYMAN NEWMAN: I did.

SENATOR GREENBERG: I might state that Assemblyman Daniel Newman is the Chairman of the Assembly Education Committee and wishes to testify with regard to this nomination. Assemblyman, the floor is yours.

A S S E M B L Y M A N     D A N I E L     F.     N E W M A N: Thank you.

Mr. Chairman and Senators, let me first express my thanks, both to you and the good Lord, for being here. I flew down here with Senator Russo this morning.

SENATOR GAGLIANO: At great risk to yourself.

ASSEMBLYMAN NEWMAN: At great risk to myself. It was my first time up with him on a windy day, but he is a good student and a fine pilot. But I want to announce that I am not going home with him. (Laughter.)

I have come here today, Mr. Chairman and Senators, to support the renomination of Commissioner Burke as our Commissioner of Education in New Jersey for the next five years.

I would like to outline a few reasons for you and partially speak at will, if I may.

The first of the reasons is evident by the number of people here today requesting an opportunity to express their opinions on this nomination. This is testimony, itself, I think, to the intense interest created by any educational issue in New Jersey.

Some may view the attention given to Commissioner Burke's reappointment as evidence of the criticism and controversies associated with his first term. I don't share that view.

New Jersey's most recent public education law, the T and E law, which this Legislature agonized and struggled to set in place, requires our educational system to be wide open. Indeed, I feel confident in saying that we are the most open educational system in this country today. I am surprised to hear some people indicate that the educational system in New Jersey has something to hide. By God, if we hid half the things that we get criticized for, there wouldn't be any criticism. This is, in fact, a system that puts its pluses and minuses up on the wall for everyone to see in every geographic region in this State and in every type of educational setting in this State. We certainly have our pluses and our minuses. It is for this reason that every issue in education develops these intense discussions. I only need to point to the issues of graduation standards, minimum basic skills, compensatory education. We talk about the criticism that comes down on the department. There is no question - no question at all - that the graduation standards, whichever way this Legislature determines they will be --- and, incidentally, let us not forget for a moment that every school board in this State - and that is the home rule concept - not the Department of Education, not the State Board of Education -- every school board in this State has the authority to set a decent standard of graduation requirements. Every school board has the responsibility and the authority to set a decent standard of promotion requirements. They have not chosen to do that. That is the "home rule." So now, we have the measure in the Legislature. And some critics will say, because the Department didn't do it, the Legislature is going to do it. That is not true. Because the local boards didn't take advantage of that common thing they all talk about, local control, then the Legislature will act; and that is why we have a Graduation Standards Bill



in the Legislature today.

Compensatory education - there is no question, gentlemen, that that program needs some very, very serious work. We have our ups and our downs in that program. There are many of us within the educational community who have serious doubts about the effectiveness of that program. The \$68 million may just be going down the drain. And I am one of those people who believe that. But I also know that the Department, through Assistant Commissioner Havrileski and others, is working to resolve that problem. It is one that has just been highlighted in the last two years and we are going to have to solve it.

You will hear some testimony, I am sure, about Special Education and those kinds of things. Let's look at how the Legislature and we must react.

Assembly Bill 886 is a bill that guarantees to every youngster in New Jersey, whether he be institutionalized, in correction or hospitals or anywhere else, a "thorough and efficient" education as provided by a law which we adopted. That bill lingers and has lingered for the last year or so in the Senate Appropriations Committee. You will hear witnesses come here today and blame the Department and the Commissioner because those youngsters are not receiving a thorough and efficient education. We share some of that responsibility. There is no way that problem can be addressed without that legislation.

Let's talk about another bill the Legislature is tinkering with now, A 1770, a bill that deals with special education and the placement of youngsters in private schools, in special services need districts, as well as local schools. That problem cannot be resolved by the Department of Education. It cannot be resolved by the Commissioner. It must be resolved by the Legislature. We are still working on that bill.

In short, the reason we have this kind of controversy in education in New Jersey is because we have established a truthful program. Achievements in education in this State are public knowledge and so are our failures. It is through this public process, established by our law, the law that we write, that we hope our citizens and their elected representatives can diligently address and resolve some of these problems.

I mention this because the process should be no less important and receive no less consideration merely because it is a Commissioner of Education. We really ought not to be surprised then - and this is really my point - that there will be people the next two days in these hearings criticizing the Commissioner and criticizing the Department, because we criticize everything else in education. And that is a good sign and I would be very disappointed if every speaker to come before this Committee were in favor of the Commissioner. It would indicate to me that our openness in our program has failed. I am encouraged by the fact that people have taken the time and the effort to come down here and oppose the Commissioner of Education's appointment because, let me tell you gentlemen, they oppose everything else in education and that is what makes it healthy.

Under his tenure at the Department of Education, the Commissioner has implemented a program of access and availability to his office and the divisions under his authority. Let me say a few words about this. I just want to tell you that I believe that the Commissioner of Education is the most responsive Commissioner within the Governor's department, at least to the members of my committee and the legislators that I am familiar with. I do not find the Commissioner difficult to reach. I do not find his bureaucrats difficult to reach. And let me tell you, if I did, I wouldn't tolerate it. But I find great cooperation - and I mean the word

"great" - from the Commissioner, his Assistant Commissioners and his Department in my role as Committee Chairman in the Legislature. I know of no legislator who can say he asked the Commissioner or any of his agents for any information that didn't receive it, even, in fact, when it might have been perhaps embarrassing to the Department. I find we always get the truth when we work with the Department.

To break the chain of philosophy which presently exists in the Commissioner's office and throughout the Department, now that it is finally together, in implementing the T & E law, in my opinion would be a serious blow to education. That T & E law is five years old, but the way I look at it, it is only three years old. We are just getting boards of education and administration used to working with that law. We are just getting the Department around to the proper implementation of that law. To change that philosophy now at the top would do serious damage to the implementation of the T & E law and the progress which we have seen till now.

We are well aware that a new Commissioner, whether it be in the Department of Education or in any other department of State government, is not always the answer in our attempts to resolve persistent problems. You and I both know that the bureaucracy remains entrenched. Commissioner Burke has been an administrator who has proved to us that he can overcome the frustrations of the bureaucracy and inject the type of leadership he believes is necessary in his Department. And my point there is, gentlemen: We have seen it before.

You and I know that the public and the Legislature have often been disappointed, after having accepted the philosophy of change as a fresh approach, only to find that those policies have been buried by the bureaucrats, a la the Uniform Construction Code in the State of New Jersey - we thought we did a marvellous thing - and the CAFRA Act. I don't think we find this in education. The replacement of a Commissioner and not replacing anybody else within the understructure of that organization is an almost useless operation. It takes a Commissioner years to change those people within that structure to come around to his leadership and his philosophy. I think we have that accomplished in the Department of Education now and we ought not to tinker with that, certainly at least for the next five years.

Commissioner Burke has weathered the storm of five turbulent years in the history of New Jersey education. The philosophy of his tenure and the Department is now together. To seek change for the sake of change or far worse, because of the bitterness of any special interest group, would in my opinion do irreparable harm to the process this Legislature has nurtured almost to the brink of satisfaction.

Let us consider for a moment some of the critical issues which have faced this State's educational community and the role of Commissioner Burke in guiding that policy. We have heard the cry of his neglect on the issue of declining enrollments and rising school costs. Indeed, it is an issue which many citizens and this Legislature must concern itself with. However, we must not talk about declining enrollments and forced regionalization of schools and closing of schools, gentlemen, without thinking of the political realities of the same.

New Jersey has tenaciously defended its philosophy of home rule. God, have we heard that for the last five years. This is particularly so in the area of local control of educational matters. Faced with the hard decisions of school closings and regionalization of school facilities as a method of reducing overall education costs in the light of declining enrollments, would the critics of the Department of Education really suggest that the Commissioner of Education should have that responsibility? Would the people of this State and the members of the Legislature accept

such intervention by the State Department of Education and/or the Commissioner?

I suggest to you all that the issue squarely rests with the members of this Legislature and those who administrate and control the local school districts. That matter is a matter of public policy and ought not to be addressed by a bureaucrat or a cabinet officer, but by this Legislature.

In the structure of the public education system in this State, the Commissioner has a clearly defined rule to implement the public policy as determined by the administrative orders of the Executive or the Legislature. Indeed, in most recent years and under Commissioner Burke's administration, the system of educational improvement centers prompted originally by federal government policy has been broadened and improved. Let me say as a personal reference, just two short years ago the EIC's, as they are known in New Jersey, were on the brink of disaster. There was a dispute in the T & E law as to whether or not the Department of Education should run and operate those EIC's or the lay members appointed to the Board of Trustees. I, personally, along with Assemblyman Harold Martin, attended meetings and intervened and negotiated between the citizen members of the Board of Directors and the Department and the Commissioner. And we reached a solution that is still in place today. In that area, we received excellent cooperation from the Commissioner and his staff.

The \$25 million program for the construction of special schools for handicapped children was mentioned this morning. Let me say this to you gentlemen and refresh your memory: That program was approved by the voters in 1973. It was on line, trying to be worked on by the Department some years ago. Three years ago - three years ago - I went storming into the Department and wanted to know why that \$25 million wasn't on the street with the economic conditions going on in New Jersey, why the youngsters were being denied those buildings, and the same kinds of questions asked by Senator Pat Dodd. Let me say to you that \$25 million program was bounced from the Treasurer's Office, to the Capital Needs Commission and to the Department of Education for three and one-half years. It was caught in the middle of a philosophical view from Washington. At first, the legislation said we shall build six regional schools for handicapped children. That was what the Department was going to do. Then along came Commissioner Burke 18 months later. We were still proceeding in that matter. Then the federal law came in and said, we shall educate the handicapped children in the least restrictive environment. At that point, the program was pulled back and we had second thoughts as to whether or not we should be building six regional centers for handicapped kids isolated out in the woods like a sewer plant. I still have my reservations about that. Then we looked it over again. The Capital Needs Commission looked it over again. The Department looked it over again. Finally, it was determined that we would go with that idea.

Now, gentlemen, eleven - eleven - of those units are now out for bid at design stages and we hope within the next year and a half to have those eleven facilities on line throughout the State of New Jersey to deal with that \$25 million. Yes, it has been late. But you cannot lay all that blame on the Department of Education. I can honestly attest to that. We can go back to several bureaucratic agencies in the State to do that.

Let's look at the most recent one. We are not going to get any complaints about this today because it is a little early. We recently passed a \$100 million school aid bill - remember that bill? It was sponsored by our good Senator Matty Feldman. The bill provides for \$100 million in school aid. The bill was aimed primarily to assist cities. There is nothing wrong with that. Do you know how

many applications there are before the Commissioner now for a piece, a part, of that \$100 million? Eight hundred and eighty million dollars worth of applications have been received by the Department to have a piece of that \$100 million. The Commissioner is going to have to decide through a formula who gets that money. You know, as I know, gentlemen, there are going to be an awful lot of unhappy people in the State of New Jersey, an awful lot of unhappy mayors of urban centers, who are looking forward to a rather handsome slice of that \$100 million. But when one realizes that the demand made on it, the \$880 million, you can understand the role the Commissioner will be in. You can further understand he is not going to make very many friends.

Another issue I would like to bring to your attention is that of cap waivers to local school districts. After the enactment of the New Jersey income tax and the establishment by the Legislature of the property tax relief fund, a massive infusion of State aid to local school districts precipitated our action in limiting the amount of budget increases. To implement this program, we assigned that role to the Commissioner of Education. This year out of six hundred and some school districts, 119 have applied for cap waivers, a grand total of about \$30 million. The Commissioner has granted about \$15 million of these requests for cap waivers.

Let me say that those amounts of cap waivers have been steadily decreasing over the years because boards of education are getting used to the idea of what they can get away with and what they can't get away with in the Cap Law. That is why we have less requests. That is why we have less need to overrule those requests.

Let me give you a few examples of what school boards were doing. In one year, they would come in and they would overestimate the students they were going to send out on tuition. The Commissioner would grant them a cap waiver on the strength of their projection. During that term in the year, they didn't get those students at all. The Commissioner had the nerve - talk about leadership -- he had the nerve and the strength the following year to go back to those school districts and say, "Hey, last year, I gave you a cap waiver because you told me you were going to have 500 tuition students. You only had 200. You now owe the people in your district those 300 tuitions." And he makes them pay the money back through a lesser cap the following year.

The same way with projections, boards of education were deliberating raising their projections of school enrollment. Again, it didn't materialize and the Commissioner backed them up. They find now that they can't get away with that, so there will be less and less of it. We can thank the Department for that. And there is a lot more I could tell you about that process.

In conclusion, gentlemen, the issues brought before this committee in relationship to Commissioner Burke's nomination and reappointment will seem to be immense and insolvable in nature. Commissioner Burke will receive a great deal of criticism as to the role he has played in trying to resolve these issues. But in my opinion there is no man better suited in temperament, in ability and in his dedication to the children of our State than Commissioner Burke. I would request your favorable consideration for nomination for reappointment as yet another commitment by this Legislature to set a course of future improvement in our educational system. This Legislature and the Commissioner, himself, have demonstrated in the past our willingness to meet the complex challenges of education. Our State's educational system is now being viewed as a model for emerging awareness and ability to meet the goals which we have set for ourselves.



I believe in the next several years, we will accomplish those goals, we will solve some of the problems you are going to hear in the next few days, and we are going to have a very relevant, a very up-to-date and a very competent educational system in New Jersey.

Thank you, Mr. Chairman and Senators.

(Written statement submitted by Assemblyman Newman can be found beginning on page

SENATOR GREENBERG: Thank you, Dan.

Senator Gagliano.

SENATOR GAGLIANO: Assemblyman Newman, you are Chairman of the Education Committee of the Assembly. Did you poll the members of your Committee to see how they felt about the reappointment?

ASSEMBLYMAN NEWMAN: Yes, I did.

SENATOR GAGLIANO: And could you give us some idea of how the members of your Assembly Committee felt about the reappointment?

ASSEMBLYMAN NEWMAN: Several of the members of my Committee are scheduled to testify over the next several days. I think I can safely say to you that five, perhaps six, of the members of my Committee support the Commissioner's renomination.

SENATOR GAGLIANO: Thank you.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions. Thank you for a fine presentation.

SENATOR GREENBERG: Co-pilot Russo.

SENATOR RUSSO: No questions, Mr. Chairman.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: I want to just thank you for a very thorough report.

SENATOR GREENBERG: Pat, you are welcome to participate in the questioning if you wish to.

Thank you very much.

ASSEMBLYMAN NEWMAN: Thank you.

SENATOR GREENBERG: Assemblyman Harold Martin. Good morning, Assemblyman. Do we have a statement from you?

ASSEMBLYMAN MARTIN: I am afraid you don't, but I can get it to you.

SENATOR GREENBERG: No. I just wanted to know whether there was one and I didn't have a copy of it. It is not required.

Would you identify yourself and your interest in this matter, other than the fact that you are an Assemblyman?

A S S E M B L Y M A N   H A R O L D   M A R T I N: I would be very happy to, Mr. Chairman. As I am sure you know, I am Vice-Chairman of the Assembly Education Committee, serving with the Chairman who was just here. I am also the Chairman of the Joint Committee on Public Schools, which, as you know, is a statutory committee created by Chapter 212.

I am here this morning, Mr. Chairman and members of the Committee, speaking as an individual. Although I believe that most of the members of the Joint Committee probably would favor the reappointment of the Commissioner, and I believe some of them will be here to testify that way.

Speaking for myself, Mr. Chairman and members of the Committee, there has been a lot of discussion today about leadership and probably there will be a lot more before the day is through. That is why I am glad to have this opportunity to speak

in favor of Dr. Fred G. Burke's reappointment.

I think we are mistaken if we identify a leader as someone who is not aware of the feelings and opinions of the people who are affected by what are often most serious decisions. With that in mind, I think Fred Burke has exercised thoughtful leadership in the implementation of the "thorough and efficient" educational system.

Given his powers, the Commissioner could have imposed severe restrictions on the decision-making powers of local school boards and school administrators. Instead, Dr. Burke has recognized the necessity of leaving the "power," if you will, within the local district.

Fred Burke exerted his leadership through a rational approach which recognized the views - and I might emphasize - the rights of others.

The end result, I believe, is a system that works because it is accepted at the local level. You just heard Assemblyman Newman - and I am sure you will hear others - talk about "home rule." It is a fact of life here in New Jersey whether we like it or not. I think it is important that we keep in mind the attitudes, the feelings, the aspirations, the hopes, and the prerogatives of those on the local level who want to make our educational system work.

That approach holds true for the Department's work with the Newark and New Brunswick School Districts, Department personnel working in conjunction with local people to find a solution to their problems.

Carrying this thought one step farther, I know of no one in State government who has tried more than Dr. Burke to meet with the public, often visiting several schools in a day. Just as you have heard from Assemblyman Newman, I too have had that experience. I have been around with him and I know whereof I speak.

His purpose is a simple one - to meet with the students, their parents, teachers and administrators in order to learn firsthand what is going on in the schools.

During this his first term, the Commissioner has also instituted an extern program in which twenty members of his staff visited several schools during the year. On the other side, nearly two thousand teachers, board members and administrators have attended the Executive Academy for the useful interchange of opinions and ideas.

Dr. Burke has also used his position to be an effective spokesman for many education issues. His expertise in the field of global education is well known. But Dr. Burke also has been an ardent supporter of adult and community education. Long before many were aware of the problems involved with declining enrollment and the problems of the elderly, Dr. Burke was advising school districts that they must open their schools to a new group of students.

In light of tightening financial resources, the Commissioner has also warned of the need to continue the Arts and Humanities in education. I think it is important here to recognize that much is being said about the basics. I would not deny - I would be the last to deny - their importance. But I would also be the first to warn that concentration on the basics and ignoring such things as the Arts and Humanities would not be, in my judgment, a good, round education. Because of that awareness that I have just mentioned, Dr. Burke established a committee of representatives from various segments of New Jersey's cultural community to make recommendations for improving the quality of Arts education. Those recommendations were presented to the State Board and are now being developed into a program that can be used by a district.

Some would have you believe that often Dr. Burke has taken vague or confusing

positions - or, at least, that is what some would like to have you believe.

Dr. Burke first introduced the idea of evaluating tenured teachers and worked to provide a system in which the use of "pupil progress" could be used in an equitable form.

Also, the Commissioner has never supported S 1480 or S 1481. His opposition to these bills is well know to all of us, I am sure. And, yes, it is true that Dr. Burke opposed placing minimum basic standards in the T&E process, but with its passage by the Legislature, he recognized his responsibility to administer the legislative mandate.

The Department of Education has been a leader in other areas which have not always received the attention they deserve.

Briefly, for example: New Jersey is recognized as a leader in desegregation; vocational services for the handicapped have improved to the point where now over 8,500 students are enrolled in programs; due process proceedings for students were instituted in New Jersey long before the federal mandates.

Also, the Commissioner: expanded the role of the County Superintendents and established the four EIC's that Assemblyman Newman described to you awhile ago; supported the creation of additional county educational service commissions, helping to reduce the administrative costs for the districts involved; and established a task force on violence and vandalism which is now seeking solutions to what is a nationwide program.

And that brings us, finally, to the most important subject, Dr. Burke's involvement with T&E.

During his term, the Commissioner has worked in cooperation with the Governor, the Legislature, the State Board of Education and all the public education groups.

To do this in an era of tranquility would have been quite an accomplishment. But, as you and I know, Commissioner Burke was given this task at a time when much of our social norms - not just education - were in question.

The Thorough and Efficient education system has been a controversial approach to education, often challenging long-established traditions. And because of this, there are many who would be happy to see the system and the people associated with it fail.

But although it is still in its early stages, I think we have seen that T&E can and is working.

Fred Burke is a man who helped that system work and I think that Fred Burke should be allowed to continue with his task.

Mr. Chairman, if you will permit me, now that I have given you a prepared statement - I haven't presented it to you, but I will - I would like to make a few comments. I have been here now some five years and I have lived through, as many of you at the table have, these five tumultuous years in education and educational finance. I have also travelled out of state on educational matters concerning my committee assignments and I have talked to many people in Pennsylvania, Rhode Island, and Massachusetts. I believe that outside of New Jersey, New Jersey is developing an image that bodes well for this State, despite all the problems that we have. And I would be the last to deny that we have these problems.

But I think there is such a thing as overreacting and getting too emotional and trying to saddle one individual, who happens to be the Commissioner of Education, with all the ills that beset us.

Five years is a very brief period of time, particularly in an era when we are undergoing such tremendous change. As you know, we have moved State aid for education in this period of time from \$650 million to over a billion and a half, which represents 40 percent of the State expenditures on elementary and secondary education.

We know too that there is a move in this country toward fiscal responsibility and fiscal accountability, call it Proposition 13, call it citizen arousement over the question of the use of their tax dollars. However you wish to categorize it, it is something that we must recognize, something that we must meet. And I say, if we meet it with emotionalism by setting up scapegoats, setting up imaginary windmills and tilting with them, we will all be doing ourselves and the citizens of this State a disservice.

I have had disagreements with Dr. Burke over the years. I didn't think he moved fast enough in Newark, as fast as I would have liked to see him move. But he is moving. I recognize there are very serious problems in Newark. But there are serious problems in many parts of this State in and out of the field of education. And I think that unless the citizens of this State take a greater interest in those problems, put the emotionalism aside and deal with the facts and make cool, calm analyses of those problems - until we do that - we cannot come up with viable solutions.

So, Mr. Chairman, I want to thank you and members of this Committee for affording me the opportunity - and I say it is an opportunity - to speak out on behalf of the man that I think - I know - understands the problems here. And I would beseech you to give him and give the children of the State an opportunity to have continuity, which is something we sorely need in the Office of the Commissioner of Education. Thank you.

SENATOR GREENBERG: Thank you very much.

Senator Gagliano.

SENATOR GAGLIANO: Assemblyman Martin, I appreciate your comments. One thing I don't understand is why we have to have this so-called continuity. Can you be more specific on that?

ASSEMBLYMAN MARTIN: Yes, I would be very happy to. I am glad you asked the question. Perhaps it is self-evident to me and some others, but ---

SENATOR GAGLIANO: We change Governors by law every eight years. The same argument would indicate that we would have to have the same Governor for the next several years.

ASSEMBLYMAN MARTIN: No. There is a difference here.

SENATOR GAGLIANO: The point is that we change department heads.

ASSEMBLYMAN MARTIN: In talking about changing Governors at the end of eight years ---

SENATOR GREENBERG: Sometimes earlier.

ASSEMBLYMAN MARTIN: Yes, sometimes earlier. Sometimes it has beneficial effects and sometimes it doesn't. But we are talking here of an educational system that is very widespread. You have heard about the built-in bureaucracy. I believe that that exists. I think that that has to be coped with and I don't think from my observation that you can cope with that in a four-year period. For all I know, you may not be able to cope with it in eight years. But I do believe that you can do more in eight years than you can in four if you recognize the problem and if you know what you can do about it.

With respect to other matters in education and the reasons I feel it is

important to have continuity, we have just embarked upon a rather ambitious and complicated system of funding our educational system. And I don't think we have seen the end of that change by any means. I think there are further court tests ahead of us and I think there may be further legislation dealing with the problem. In fact, I would be willing to bet on that. But I believe it takes time. I know we are all impatient and we would like to see these problems solved yesterday. However, they can't be.

I think that we would be most unwise, having gone this far with the Commissioner, to abbreviate that education, to terminate it, if you will, and start all over again.

I also want to point out that there are other people looking in from outside New Jersey who might ordinarily be interested in the job of the Commissioner, but who might very well take a look at New Jersey's history with Commissioners and say, "If they can toss aside a Marburger in four years and then turn around and toss aside a Burke in four years, why should I think that they would not toss me aside in four years?"

SENATOR GAGLIANO: Yes, but that presupposes that we are going to look for a Commissioner from outside the State. Don't you think we have qualified people in this State to take over the job?

ASSEMBLYMAN MARTIN: Yes, I do believe we have qualified people.

SENATOR GAGLIANO: Don't you think there would be people available who would take a five-year appointment at that salary with all of the benefits that go with it?

ASSEMBLYMAN MARTIN: Well, there are also some problems that go with it and there are also some agonies that go with it.

SENATOR GAGLIANO: I realize that.

ASSEMBLYMAN MARTIN: There might be some ulcers that go with it.

ASSEMBLYMAN GAGLIANO: Well, that is true of any big job. But don't you think there would be people in the State who would take the job on the basis of a five-year appointment, qualified people?

ASSEMBLYMAN MARTIN: I am sure that there would be. All I can tell you is that I think we have a highly qualified man here. As far as I am concerned, right at the moment, I am recommending his reappointment.

SENATOR GAGLIANO: Thank you.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Pat.

SENATOR DODD: No questions.

SENATOR GREENBERG: Thank you, Harold.

Senator Lipman.

SENATOR WYNONA M. LIPMAN: Senator Greenberg, my fellow Senators on the Judiciary Committee, ladies and gentlemen: I am glad to have this opportunity to voice my opinion.

This scene reminds me of some of the proceedings which took place in the Senate five years ago. At that time, I witnessed a brutal attack on a former Commissioner who was attempting to solve what he believed to be the major problems hampering the effectiveness of our educational system. Members of the Legislature



felt that former Commissioner Carl Marburger was exceeding his authority and so he was dismissed.

As a result of that experience and being temporarily without a Commissioner, the members of the Legislature began to work on various educational remedies, some of which have proved to be ill-advised and ill-conceived. Now we find ourselves publicly haranguing the incumbent Commissioner for implementing those same programs. On one hand, we chastise the professional Mr. Marburger for following his own initiatives, in the absence of legislative directives, while on the other hand we berate our present professional Mr. Burke for implementing the faulty legislative directive which we gave him. I am beginning to doubt if my colleagues know what they want.

Education is a very emotional issue, and for good reason: It deals with our children who are the future of our society. But I would have hoped that we had become a bit wiser in the intervening years and learned to distinguish the frustration we feel because our system of public education is not producing the result we expect from the ability of the man we chose to administer the system. When a State Task Force concludes that over the past twenty years our schools have deteriorated to the point that many children leave them without the ability to read or compute, we demand a quick solution. No Commissioner of Education can correct overnight deficiencies which are the consequences of twenty years of decay.

We blame Mr. Burke for the first hectic two years of the implementation of the T&E program. We appropriately forget the Legislature's neglect to give the Commissioner an opportunity to implement this plan. Six months after the Commissioner arrived, we enacted Chapter 212 and directed him to implement it, without funds to distribute the aid or the administrative staff necessary to explain the requirements of the new law to local school personnel. School budgets for the next year had already been finalized when the income tax passed, causing the bulk of the new funds to be channeled to property tax relief rather than improvement of educational programs. The Commissioner was obligated to focus an extraordinary administrative effort on fiscal details to insure that local school districts could prepare budgets during this period of uncertainty and that they could be adjusted after funding had become available. It is not surprising that we did not find an immediate improvement in student performance during this period. Yet, when we are not pleased with the outcome of our own actions, we look around for someone to blame. In this case, it is Mr. Burke.

I suspect that a great deal of the criticism of the Commissioner is the result of the general public's lack of understanding of the many different roles he must play and the inherent differences between some of them. We expect Mr. Burke to be a cabinet officer, an agent for the Legislature, Director of the State Department of Education, a moderator between competing education interest groups, a judge of school district disputes, and an advocate for school children. If we expect the Commissioner to identify significant issues and to assume the proper role to address these issues, then we can be sure that his decisions will not please everyone, that he is bound to antagonize someone.

Time and time again, I have watched Mr. Burke perform one role effectively only to be criticized for not having assumed another. When he granted cap waivers two years ago to permit school districts to continue educational programs which had been proven effective, he was praised as a child advocate by educational leaders, but criticized by others who demanded tighter control of expenditures. Yet this year when he granted no waivers to districts above the 65th percentile in order to achieve greater equalization of expenditures, he was applauded by one Senator and

criticized by another. Fortunately, the Commissioner had the courage to change the administration of the caps to meet the changing educational needs in spite of criticism.

In truth, I suspect that the effectiveness of any Commissioner of Education is not to be judged by his public image, but how well he is able to help local school districts solve their problems. Mr. Burke could have easily won acclaim in the newspapers and with the Legislature by taking a strong stand in Newark, by announcing a State takeover of the Newark School District and the wholesale firing of administrators and staff. But he rejected such a course of action because it would have resulted in irreparable damage to the local school district. Chapter 169 had just been enacted. This law placed new requirements on Newark which were different from any other school district in the State. In addition, the Governor had asked Mr. Burke to appoint a special agent to examine current business practices in the district. The Commissioner advised that new leadership was needed in the district and stood aside to allow the district to reorganize under Chapter 169, to institute new business practices and to implement the changes required by the T&E legislation. When it became apparent that the local Board of Education, even with new leadership, could not retire the growing deficit and balance its current budget, the Commissioner intervened decisively and helped to negotiate a settlement. In the end, he found a solution which did not stifle local initiative or usurp local responsibility.

Some have argued that the experience in Newark has demonstrated that Mr. Burke is ineffective. On the contrary, I believe that the Newark experience demonstrates that the Commissioner has the ability to resolve complex administrative problems without moving in and taking over, and placing State employees in charge of the school district.

It is all too easy to point at Commissioner Burke and contrast his record to what we believe someone else might have done in his place. But when I imagine the realistic alternatives, I am not dissatisfied with the man we chose for the past five years. Consider the havoc which could have been wrought by an insensitive, arrogant or self-aggrandizing administrator. The system of public education in New Jersey has incorporated the many changes required by Chapter 212 without a State takeover or crippling strikes brought about by a lack of concern for the personnel who must each our children. Mr. Burke's critics do not take into consideration the fact that any system of education is composed of a delicate balance of many different forces that in concert provide the resources necessary to educate our children. From the beginning of his term as Commissioner, Mr. Burke has gradually and gently shown all members of the educational community that together they must address contemporary educational problems. When we look at Commissioner Burke's leadership, we find that he has actually provided the kind of sensitive concern that has permitted the system to continue to function while it has undergone profound change.

Over the past two years, the Commissioner has reorganized his department to establish an administrative structure which can address the disparity between urban and suburban student performance. He has promised to closely monitor progress in urban districts and to concentrate the Department's resources in high need areas. In the past year, we have begun to see the results of these efforts in the improvement of student performance in compensatory education programs.

I would ask the members of the Senate Judiciary Committee to permit Commissioner Burke to complete the important educational reforms which were initiated in his first term of office.

I thank you again for this opportunity to speak before you today. I

support the confirmation of the Commissioner.

SENATOR GREENBERG: Thank you, Senator.

Senator Gagliano.

SENATOR GAGLIANO: I have no questions.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Senator Dodd.

SENATOR DODD: No questions.

SENATOR GREENBERG: Thank you very much.

SENATOR LIPMAN: Very good. Thank you very much, gentlemen.

SENATOR GREENBERG: Assemblyman Rand.

A S S E M B L Y M A N   W A L T E R   R A N D: Good afternoon, Mr. Chairman and gentlemen, I thank you for the privilege of allowing me to address you for just a few moments.

Gentlemen, as you deliberate the issue of whether or not to reappoint Fred Burke as Commissioner of Education, I would like you to consider that decision from my point of view, that of a working legislator, a member of the Assembly Education Committee and a member of the Joint Appropriations Committee, and a legislator who frequently counsels and seeks advice from the Commissioner.

As a legislator who spends a lot of time in the State House chambers, as well as spending countless hours listening to constituents and seeking their advice concerning public schools, I have developed a definite view of what my job is as a public servant and how the Commissioner should work with the 120 members of the New Jersey Legislature in building and sustaining a Thorough and Efficient public school system for the children of New Jersey. In the next few minutes I would like to express my thoughts about why I believe Fred Burke has admirably provided invaluable service as we seek to make the New Jersey schools better for children and, therefore, why I urge you to support his renomination.

Let me give you in brief form the reasons I think Fred Burke should be reappointed:

1. He has been cooperative and has been especially open and candid with us.
2. He understands the process of how policy is to be developed between the Executive and Legislative Branches.
3. He has shouldered the responsibility for administering the most comprehensive program for school improvement that this country has ever seen. It has taken great courage to do this.
4. He has been accessible to us and our constituents.

I would like my statement today to express the kinds of experiences that I have had in my daily work and how Commissioner Burke has aided the efforts of one legislator and his Committee as we have jointly worked to bring quality education to New Jersey.

And, gentlemen, if you think that I think everything is peaches, that is not so, because we have many problems. Everything is not coming up roses.

As a legislator who feels compelled to be responsive to his constituents as they approach me with problems, it does not serve my interest and, if I may say

so, I do not believe that it serves our collective interests to have a Commissioner who believes and acts toward us as if he is the expert and we, the legislators, must wait to act until he approves. That has been the attitude of certain previous Commissioners. Of equal importance, all too frequently, it has been the inclination of many legislators to follow the Commissioner wherever he leads. That has not been the sentiment of the Legislature since I have been here and it is not the feeling and my idea of the present Legislature. We must continue to maintain the leadership that has been established over the past five years, and to do so requires a Commissioner who has the ability and willingness to work with us.

It is the function of the Legislature to aggregate information coming from a wide range of sources. The Commissioner is a vital source in the legislative process of aggregating information whereby the Legislature can arrive at an informed consensus on educational policy. I become very concerned when a Commissioner goes much beyond the Legislature in the development of policy, and I believe one does so at the peril of ever making such policies effective, as good as they might be on paper. By going beyond us or around us undermines the process whereby sound, effective educational policy is made. It is this understanding of the intricate process involved, on a day-to-day basis, that has distinguished Commissioner Burke's career and has furnished me with the basis of my decision that he should be continued in his post.

The role of the Commissioner in legislative oversight is extremely critical. We must oversee the administration of the State system and ensure that any changes to be made, and there are many, must contribute to the education of the individual child as well as endure and be effective over time. Conversely, we must develop sufficient legislative oversight powers to remove programs that once might have shown a great deal of promise, but never developed the effectiveness we demand. The role of the Commissioner is absolutely critical to our endeavors to oversee the schools. At critical points, the Commissioner and his staff could effectively "stonewall" us in our efforts to evaluate certain programs. I can think of an instance last year when it was not in Commissioner Burke's interest to be so open and candid concerning the operation of one of his programs. However, he was candid. It is not Fred Burke's style to be anything but forthright. He does not have the habit of mind to be anything but open and candid about the operations of the Department of Education. I do not know what your experiences have been with other Executive agencies, but, on that issue alone, I would support his renomination.

I believe Commissioner Burke has made an extraordinary effort to keep us informed and to keep the Committee informed, whether the issue was the Newark deficit, the new teacher evaluation regulations, or any number of other issues. It was not an easy matter for Fred Burke to take the position he did on teacher evaluation. The idea of "pupil progress" was, and continues to be compelling. But I am convinced that the most important thing is for us to get an evaluation process operating in the schools over the long term. It must be an evaluation process that all parties are satisfied with and must necessarily abide by. In order to get such a balanced policy developed and implemented, it takes courage - and Fred Burke has demonstrated such courage.

In fact, gentlemen, take the school classification program. It is not written into the T&E law. In fact, Fred Burke interpreted the T&E law so that we have that and put it into the code.

This brings me to my last comment. How accessible is the Commissioner? Is he there when we need him? When a difficult local issue arises, can we

expect the Commissioner to hear the concerns of local parents, staff, citizens, and students, and help us work out a solution? My answer to each of these questions is an unequivocal - yes. For those of us responsible for statewide policies, our strength comes from the manner in which we establish channels of communication and working relationships with our constituents. Although I represent all of the citizens in New Jersey, on a day-to-day basis, I find myself listening to constituents who reside in my district. When a problem arises with a local district, a problem related to State policy, I have been able to count on Fred Burke to even come to my district, if need be. The educational reforms established in 1975, especially the ones concerning governance, make it absolutely essential that the Commissioner be responsive to real problems that are sometimes created in local districts. I don't know what you gentlemen thought about T&E, whether you thought that T&E was going to be the panacea and answer all the evils brought down to us over the past years. To me, it doesn't represent that, gentlemen. T&E to me represents a slow, deliberate process that will take time to implement in order to improve the conditions that have occurred over a period of years. Some day - some day - after a lengthy, agonizing effort, we might see the end and we might see a ray of sunshine.

The T&E process is a very difficult piece of legislation to implement. Regrettably, it has further politicized the Commissioner's Office. Implementing such a law is in many ways like walking through a mine field. In short, gentlemen, it is a hot potato. It was a hot potato. It is a hot potato. And it will continue to be a hot potato.

We are full partners with the Commissioner of Education and we are full partners with the parents and children whom the schools serve. Together, we must work to strengthen the school improvement process. I believe the key to successful implementation is finding better ways to increase both the quantity and quality of parent and community participation. Fred Burke is deeply committed to these goals and I would like to have Fred Burke at my side as we move towards these goals. I hope that you will unanimously support his reappointment.

Thank you very much, gentlemen.

SENATOR GREENBERG: Thank you, Assemblyman.

Senator Gagliano.

SENATOR GAGLIANO: Assemblyman Rand, I am concerned about the slow process that you mentioned - and I think that is a quote. I think that is one of the main concerns of the people who are our constituents out there in this State, that it is maybe too slow a process. You know, when a parent of a first-grader looks at the situation, if they knew, for example, that things were not going to be better - I don't care whether it is in an urban, a suburban area or wherever you are - and that it was going to take until fifth grade before that child got into the basic skills and the other things, I think they would have all of our heads. I think that is one of the reasons we have a two-page list of people who want to testify. I think the idea of a slow process is the thing that is killing all of us. It is hurting the people who need it the most, and that is the students. You can't give a second-grader a first-grade education if he didn't get it. Then it compounds itself and by the time they are in high school, they are so upset with the system, with the people, with their parents and with their teachers that they revolt and rebel. So I don't agree with you it is a slow process and I can't accept the idea of a slow process. We have to have a crash





program. That is what I thought T&E was.

ASSEMBLYMAN RAND: Give them the money, Senator.

SENATOR GAGLIANO: There is plenty of money there.

ASSEMBLYMAN RAND: Senator, let me say this to you: I represent an urban area as well as a suburban area. I will tell you this, that you can't do in six hours what is undone in eighteen hours. And it takes a joint effort by the home and by parents, not just by the school system. I think the school system is doing a good job, in spite of all the particular blocks that are being put in front of it. I think there is a lot to be improved. I don't sit in a glass cage. I served as a member of the Board of Education for three years. I certainly know the pitfalls and I certainly know the frustrations. But I think we will move forward. I have great confidence in the American educational system. That is why I am here today on my own to support the Commissioner because I have seen him in action and I have seen what he can do. I have seen him come down to my district, not send down one of his lieutenants, not send down one of his under-secretaries, not send down one of his aides. But he, himself, volunteered to come and he has come down to answer all questions, anything that we wanted to ask him, and has faced the issue squarely and honestly. And that is all I ask from any bureaucrat.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Russo.

SENATOR RUSSO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Thank you very much, Assemblyman.

William Colon.

W I L L I A M C O L O N: Good afternoon, gentlemen.

Mr. Chairman, I had a prepared statement of my testimony which I thought was going to be handled by the Judiciary Committee. I was requested to submit twelve copies of my testimony by Mr. Tumulty, which I did. To my surprise, last Tuesday, I got a call from a high-level officer from the Department of Education refuting some of my statements already, asking me why I was including his name in my testimony and why I was doing this, that I was misquoting him.

Now I question why or how the testimony that I have prepared got into the hands of this gentleman, without my permission. I question the ethics of such a situation where I come here and I already know that my testimony is not worth anything because already a lot of people have been punching holes in it. I am going to read it anyway for the record.

SENATOR GREENBERG: Just a second.

SENATOR SHEIL: I would respectfully suggest that it is possible that it was leaked out by someone that you worked with on the report, whether it be Senator Dodd or some reporter. It is certainly very possible.

MR. COLON: Senator Sheil, I did not work with Senator Dodd. As a matter of fact, I don't even know Senator Dodd. This is the first time I met him. I only met him --- I didn't even meet him this morning, as a matter of fact.

SENATOR SHEIL: You have spoken to him many times.

MR. COLON: To whom?

SENATOR SHEIL: Senator Dodd.

MR. COLON: No, never.

SENATOR SHEIL: You have made a number of phone calls to the State House, requesting him to call you back.

MR. COLON: Only once, I tried to talk to Senator Dodd, Senator Sheil - only once.

SENATOR GREENBERG: The statement that you just made that the testimony that you are about to give today is meaningless or valueless is not true.

MR. COLON: I would hope so.

SENATOR GREENBERG: You don't have to hope so. I am telling you it is not true. I don't know who called you or what he said or how he got a copy of it, if in fact he did. Leaks in the government of the State of New Jersey are not new, ---

MR. COLON: I know that.

SENATOR GREENBERG: (Continuing) --- as we all know; nor are they new in the State Board of Education or in any other organization where more than one person is involved.

I would like you to proceed on the assumption that the people at this table are interested in what you have to say and are not interested in what somebody at the Board of Education called and told you about, concerning the contents of your statement. I would like you to proceed on that basis.

MR. COLON: I appreciate that. I would hope that that is the case and that my statement is not dealt with as just another one of those comments. I am really concerned about this because I did not work with anyone on this statement. It is my own personal opinion, Senator Sheil. It is my own personal opinion.

SENATOR GREENBERG: Mr. Colon, the day after I announced that there would be hearings in this matter, which was within a matter of hours after we received the nomination, I received a telephone call from you.

MR. COLON: That is correct.

SENATOR GREENBERG: And I returned your call from the State House. You indicated to me that you wanted to appear and testify and that you had a statement that you wished to make. I invited your appearance and your testimony. And you are now here to give it to us. We welcome it. Please proceed.

MR. COLON: Thank you, Mr. Chairman. Mr. Chairman, gentlemen, I come here today to do what I consider to be my public duty as a duly-appointed member of the New Jersey State Board of Education since 1975, as a parent - I have children in the Jersey City Public Schools - as a private citizen who is concerned about the welfare and the education of our children.

Mr. Chairman, I oppose the renomination of Fred G. Burke as Commissioner of Education of the State of New Jersey. I would hope this Committee and the Senate, in its wisdom, would reject his reappointment for the benefit of the children of this State.

There are many reasons why I am taking this position and now I will summarize for you some of what I consider to be those salient reasons which require your scrutiny and evaluation:

It is my considered opinion, and my own personal opinion, that Fred G. Burke has consistently misled the New Jersey State Board of Education which by law is charged with the responsibility for educational policy-making by providing inaccurate information to the Board - as in the Newark situation - and by trying to alter expressed State Board educational policy - as on the issue of tenure teacher evaluation. On the latter subject, Commissioner Burke willingly prepared and distributed teacher evaluation guidelines which subverted the letter and the spirit of the approved State Board policy.

In doing so, Commissioner Burke reversed his own position and contributed to the confusion on this issue by playing to the wishes of teacher groups.

I oppose Fred Burke's renomination because, as Commissioner of Education, he should support the thorough and efficient rules and guidelines of Department of Education staff and the Commissioner himself. There is now evidence that Dr. Burke has permitted the weakening of the T & E process by not enforcing the educational monitoring process at the county and local levels. He was willing to "go on record" in support of two bills which would have eliminated the monitoring process as presently established.

I recently received a copy of a letter from Dr. Ralph Lataille, Deputy Commissioner, admitting that the monitoring process was indeed very weak and, at the strong suggestion of parents' and citizens' groups, implementing a remedial plan to correct those inefficiencies.

I understand there was a verification of that, and he was against the bills, but his opposition was rather weak.

I submit to you, Mr. Chairman, that enforcement of the T & E monitoring process is indeed very weak and could stand a lot of improvement if we only had a Commissioner who was willing to thoroughly implement the provisions of the law.

I oppose Fred Burke's renomination because he has proven to be an ineffective administrator and weak educational leader. As a member of the State Board of Education, I have witnessed the many occasions when the Commissioner has "switched" sides on important educational issues. And I am not talking about changes in emphasis or direction, but on embracing a specific educational philosophy and then a few months later dropping that philosophy and adopting a new one which might be contradictory, as circumstances - or whatever lobby group - warrant. This has happened over and over again; a few examples I can mention are: The Commissioner's position on minimum basic skills standards as part of the T & E process - in

opposition to - only to embrace minimum basic skills after the passage of A-1736; the Commissioner's position on tenure teacher evaluation rules - he promulgated and initiated them - to his new position of opposing what he originally proposed; and, finally, his position on "cap" waivers, from a fiscal liberal -approving almost all cap waivers - to a fiscal conservative - no cap waivers will be approved.

I submit to you, Mr. Chairman, that these actions have created a "vacuum of discontent" between the State Department of Education and the local districts. The Commissioner's various positions have created confusion and have given the State a lack of direction in terms of real educational policy.

Not only confusion has been the rule, but I have yet to see Commissioner Burke initiate any legislation from the Department for the benefit of the children. It seems to me that Dr. Burke has had an extremely difficult time understanding how to go about creating, initiating and working with the Legislature to develop the kind of educational programs we need in this State.

It seems to me that every time we turn around the Department is reacting to the various pieces of legislation which affect education. The Department does develop a lot of "position statements."

If this state of confusion, lack of creativity and direction were not enough, we have most recently witnessed a series of acts by the Commissioner which could - if perpetrated by other persons - have been classified as "illegal."

The Commissioner actually permitted a school district - Newark - to operate with an illegal deficit for at least two consecutive years. The reasoning for his actions in Newark clearly testify to the fact that no clear-cut decisiveness exists within the Department and that Fred Burke is at least indirectly responsible for the present and poor state of urban education in general and Newark's in particular.

I think that the Department has the responsibility to work with the Legislature and take the initiative on these things along with the Legislature. I am also concerned about the recent allegations which Senator Gagliano mentioned concerning the expenditure of fair educational allocation funds by our vocational educational division. These funds were used to pay for consultants for a public meeting, and now there is an audit being performed by the State Treasurer's office, which I understand today has been turned over to the Attorney General's office to initiate an investigation. The Commissioner up to this date was silent on the subject. Now he has some comments on this situation.

Mr. Chairman, gentlemen, please understand that I fully agree with those who state that a Commissioner of Education shouldn't be blamed for all that is wrong with education in New Jersey. I share some of that responsibility myself, and I am fully aware what the implications are. I don't think it is fair in a sense to really blame him for all these things that are happening. But he has to take the ultimate responsibility for this, unfortunately.

A Commissioner of Education should be a strong leader who does possess the necessary managerial skills to make a decision stick and at the same time possess the necessary skills to work along with the State Board in developing educational policy as well as taking the initiative - by working with the Legislature - in developing sound educational processes for the benefit of New Jersey's children.

This is why I believe Fred Burke has failed. This is why I believe he should not be confirmed. I am asking you now to evaluate Dr. Burke's



performance in light of what is best for the children of New Jersey. I am asking you to take a close look at the record and to ask yourselves if we can do better.

I strongly believe New Jersey needs a Commissioner of Education who is truly committed to the children of New Jersey, a person who understands our educational needs and is thoroughly versed on the idiosyncracies of our educational structure and who could function within the body politic to the advantage of progressive education in New Jersey.

As Senator Musto mentioned, we shouldn't be talking about the ills of the system in general, but specific actions that the Commissioner has taken which we can question his leadership. I have done that. I truly believe Fred G. Burke is not that man. (Applause)

SENATOR GREENBERG: Thank you. Senator Gagliano.

SENATOR GAGLIANO: Mr. Colon, you have been on the State Board of Education, since 1975?

MR. COLON: That's correct.

SENATOR GAGLIANO: And, Mr. Burke, has been the Commissioner a good part of that time.

MR. COLON: Yes.

SENATOR GAGLIANO: How often do you meet with the Commissioner?

MR. COLON: We meet once a month, at least.

SENATOR GAGLIANO: And, has that been the case ever since you have been on the Board?

MR. COLON: Yes, that's right.

SENATOR GAGLIANO: So, basically what you are saying here is that he changes positions a lot. Do you think that comes about as a result of pressures that are imposed upon him either by the Legislature or the administration or somebody else?

MR. COLON: Yes.

SENATOR GAGLIANO: Do you feel that he accedes to the pressures from teacher organizations, for example, the N.J.E.A.?

MR. COLON: I think he has been pressured a lot by the N.J.E.A. and on some occasions he has felt that he had to be flexible with them.

SENATOR GAGLIANO: Can you give us an example of that, sir?

MR. COLON: I would just mentioned the whole question of teacher tenure evaluation - teachers who already have tenure are evaluated - and the question of pupil progress, which the N.J.E.A. was opposed to from the very beginning.

SENATOR GAGLIANO: In other words, he was initially for pupil progress as a touchstone for evaluation.

MR. COLON: He introduced the whole concept; as a matter of fact, I don't think the State Board would take the issue up themselves.

SENATOR GAGLIANO: He introduced it to you, the State Board?

MR. COLON: Yes, that is correct.

SENATOR GAGLIANO: And, thereafter, then when did he withdraw it or when did he change his attitude toward it?

MR. COLON: I would say--- Well, we approved the teacher tenure regulations, I would say, July of '77, or '78, I should say, and he was opposed to our working with the public pupil progress approach, I would say, six months prior

to that, but a year prior to that his position was for pupil progress and for teacher tenure evaluations.

SENATOR GAGLIANO: Did he indicate that he had been spoken to by any groups, and as a result he changed his mind?

MR. COLON: Well, I have to say this in fairness to the Commissioner, he has always been very attentive in the sense that he has always admitted that he has talked to the various educational groups. And I think to his credit, he has also mentioned to us that he spoke to the N.J.E.A. and he spoke to the School Boards Association, and on that issue he mentioned a few times that he had spoken to the various groups.

SENATOR GAGLIANO: Okay, thank you.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: How many members are on the State Board of Education, Mr. Colon?

MR. COLON: Thirteen.

SENATOR MUSTO: Any other members feel as you do?

MR. COLON: That is an interesting question. I think the majority of the Board - and this is again my own personal opinion - feel as I do. The problem is, I hate to question their sense of what is appropriate. But, I feel as a member of the State Board of Education, which is charged with the educational policy-making in this state, and has the final authority, obligated to take a position either for or against the Commissioner. I think the members of the State Board of Education should---

If they truly believe that the Commissioner has done a good job, they should say so. If they don't believe that he has done a good job, they should also say so. This is why I am here.

SENATOR MUSTO: I presume, their not being here, should indicate that they have no objections to the Commissioner.

MR. COLON: I think it indicates that they would rather be quiet and stay silent on the subject than commit themselves one way or the other. They are very cautious about their attitude. It doesn't mean anything, really, as far as I am concerned.

SENATOR GREENBERG: Are you prepared to state today that as a result of your conversations with members of the State Board that a majority of that board is opposed to the renomination of Commissioner Burke?

MR. COLON: That is a very hard thing to say in the sense that you are asking me to poll the board members, and I couldn't say that. But, just to mention an example, if there wasn't any indication about support for Commissioner Burke from the State Board members--- We had a meeting with the Governor and at that meeting, I, myself, and other Board members, including the President, raised objections to Dr. Burke's reappointment. Now, that was the time for any Board member to raise objections, and if they were in disagreement with what we were going to say, or with what was said, then was the time for them to say so, and nobody did. Nobody defended the Commissioner.

SENATOR GREENBERG: Did people speak out in opposition to the Commissioner?

MR. COLON: Yes, we did.

SENATOR GREENBERG: How many?

MR. COLON: At least five.

SENATOR GREENBERG: Would you name them, please?

MR. COLON: Okay, the President of the Board, Mr. Ritchey, Ruth Mancuso, Susan Wilson, myself, and probably I would say Jack Slater.

SENATOR GREENBERG: Thank you. Senator Russo.

SENATOR RUSSO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: Being from Jersey City, I am as concerned about a number of things as you are. One of them, of course, since you have been on the Board, since 1975, I am rather concerned about--- Your silence has been deafening. I live in Jersey City, where you do.

MR. COLON: My what?

SENATOR SHEIL: Your silence has been deafening on issues such as bilingual education which is important.

MR. COLON: That is not true. That is not true at all. I have been very vocal on the issues.

SENATOR SHEIL: I wish you could reinforce this with newspaper clippings and things.

MR. COLON: Now, Senator---

SENATOR SHEIL: Let me continue. Senator Gagliano asked you how often you meet with the Commissioner, and I believe you said once a month. I think you are alluding to the State Board of Education meetings.

MR. COLON: Yes.

SENATOR SHEIL: You should have said you could have met with them once a month if you attended the meetings. Correct me if I am wrong, I think in 1977 you missed six out of twelve meetings; is that correct?

MR. COLON: Yes.

SENATOR SHEIL: Now, I am rather concerned - as a fellow Jersey Cityite that you are down there representing us--- I really want you to get down there and be vocal for the whole state, not just for the urban areas. But I don't see how you can do this if in one given year you are missing fifty percent of the meetings. And in 1979, I think you could have met three times, and you have missed thirty-three and a third percent of those meetings.

MR. COLON: The reason why I missed that meeting was I was ordered by my Director to be some place else. So, I had a choice, either go to the State Board meeting or go some place else.

SENATOR SHEIL: Well, I doubt that very much, because, that is certainly contrary to your speaking out. They would endorse your coming down here. They certainly didn't preclude you from coming today. They could have done that.

MR. COLON: Well, Senator, let me explain why in 1977 I was absent fifty percent of the time from the State Board meetings. Maybe it is something that I should talk to you about in private, but since you mentioned it, I am going to say it publicly.

In 1977, a new mayor was elected in Jersey City, Senator, as you well know. At the time I was employed as Deputy Director of the Office of Employment and Training in the Jersey City CETA, which I still am. At the time the mayor appointed a gentleman by the name of Aaron Schulman as Director of that program. Mr. Schulman requested me not to attend those meetings until he cleared the matter up with the mayor about my attending State Board meetings without the permission of the mayor.

Now, I spoke to the mayor, and to the credit of Fred Burke, he even spoke to the mayor for me, at after that time, and resolving that problem, everything was cleared up and in 1978, I don't think I missed one meeting. You can check the record, please.

SENATOR SHEIL: You missed two out of twelve meetings in 1978.

MR. COLON: Well, probably there were some reasons why I didn't come to those meetings. I have children. And, children get sick. This is why I am so concerned, Senator, because I think we can do better in the State of New Jersey. We don't have to go out of the State of New Jersey to find somebody to direct the educational system in New Jersey. There are a lot of qualified people in New Jersey who can do a better job than Fred Burke. I know that we do have a lot of good qualified people in this State.

SENATOR SHEIL: No question about it. If you recall, just before this meeting you came to me and you said you had spoken to Mayor Smith and you wanted to reiterate what he had told you. He told you to come down here and say whatever you want, and he would endorse your coming, and he would like to have you be as vocal as possible and attend all the State Board of Ed. meetings.

MR. COLON: As I told you before, Senator, I am grateful to the Mayor for allowing me to come here--- Not even allowing me, simply allowing me to have the freedom to speak up publicly here. I have a lot of respect and admiration for the mayor, and I am thankful to him for doing this. By the way, Senator, I am taking a personal business day today, just in case.

SENATOR SHEIL: But I am sure you will recall what I said to you. That is what America is all about. You can come here and say whatever you want. Do you recall that?

MR. COLON: Yes, sir.

SENATOR SHEIL: My biggest concern is that you would really come down and attend the meetings. We certainly would like someone who is going to be representative and attend the meetings.

MR. COLON: Well, Senator, as I said, last year after resolving the problem that we had, last year I came to ten out of twelve meetings. This year I missed one meeting. If you compare my attendance with any other Board member, you will find - and I am sure you have the same situation in the Assembly and in the Senate - that a lot of people miss meetings. (Applause)

My record is as good as anyone on the State Board.

SENATOR SHEIL: I just hope it will be better. Because I am really sincere in wanting you to really give us the representation by coming down here.

MR. COLON: Thank you, sir.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: I would like to get back to my original question of Mr. Colon which he responded to regarding the feelings of the members of the State Board of Education. I would like to request that the Chairman contact the members of the State Board of Education and take a poll, because I think it would have some value to the Judiciary Committee to get their views. It is my feeling that their not being here indicates that they at least favor the nomination or are neutral in the nomination of Mr. Burke. I would like to get their feelings. I think the Judiciary Committee should have that.

MR. COLON: I would like that very much, Senator. Thank you for suggesting that.

SENATOR GREENBERG: Senator Dodd, I understand you wish to ask a question.

SENATOR DODD: Mr. Colon, have we ever met or spoken on the phone before this?

MR. COLON: No. I never saw you in my life. (Laughter)

SENATOR DODD: Don't get carried away. Without naming any names, have you received personally any pressure whatsoever not to testify today - name of individuals or organizations, or hints?

MR. COLON: No, I have not. This is the subject I was discussing with Senator Sheil. I am grateful to my employers who allowed me to be present. I have not received any pressure one way or the other.

SENATOR DODD: With regard to the bilingual education program in our State, could you perhaps explain some of this to the Committee? The Board has adopted rules and regulations; there have been two postponements by the Commissioner and then an out and out grant of emergency certificates. Could you explain this to the Committee, how this works with the Board and the Commissioner.

MR. COLON: We represented a Hispanic group which is greatly affected by the whole issue of bilingual education. I did support the task and I did support the State Board of Education in the bilingual education, and I did support the teachers. The issue came about after the State Board adopted a series of regulations to certify teachers as a result of the bilingual education law.

Initially there was the whole question of the proficiency of the Hispanic teachers speaking the English language. It was decided by the State Board of Education and by the Department at that time that it would be a good idea, as far as the code, to prepare a series of tests to determine the proficiency of these teachers in the English language. At the time the code was adopted, there was also a series of deadlines. I think the original deadline was sometime in 1977, to all bilingual teachers to go through the process of the proficiency test, and as a result of having passed the proficiency test, receive permanent certificates as bilingual teachers. The idea of course was to make sure that the teachers in the classrooms were qualified to teach the children. The theory behind it, in terms of the philosophy of bilingual education is to make sure - at least the way I read the law - that we provide transitional language services to the children that need that transition from the Spanish, or whatever language is spoken at home, to the English that is spoken at school. This is the reason we should provide bilingual education.

Now, how are we going to make sure that the bilingual teachers - or how much time are we going to give them to make sure that these teachers speak English - that they are able to pass the proficiency test? Originally we gave them until sometime - I think it was September of 1977. I might be wrong on the date. After that time, we found out that out of six hundred people taking the test about half of them failed the test. There were a lot of questions raised about the validity of the test itself, and of course there were a lot of people that were concerned for the bilingual teachers losing their jobs at the time. That was the reason why the State Board at that time, at the recommendation of the Commissioner, went ahead and gave the bilingual teachers, through the Teacher Credentials Unit, the opportunity to work more improving their language skills up until April of 1979.

That month, one of those meetings that Senator Sheil mentioned, I wasn't at the meeting, but the State Board approved another extension, obviously, so the



bilingual teachers could prepare themselves for the test. Obviously we are still having problems with the test. I said originally in 1977 at the time when it came up that I thought it was sufficient time for the bilingual teachers to prepare themselves and pass the test in April of this year. I still hold that position. I thought that we gave them enough time to prepare themselves, and I said so publicly, that that should have been the last extension at that time. I feel very strongly that a bilingual teacher should be just that, a bilingual teacher, in other words, able to communicate in two languages and be able to teach the children in either language. And that is basically where the issue is at this time.

SENATOR DODD: Thank you. I would just like to compliment you for your guts in coming out today. It is a breath of fresh air. We as legislators, this Committee in particular, look to the educational community for some guidance, some leadership to tell us what they think. And, out of the major organizations in this State that represent education, you, sir, are the only one. And I compliment you for that. (Applause)

SENATOR GREENBERG: It is now one-fifteen. We are going to break for a luncheon break and we will reconvene at two o'clock in this room.

(Whereupon a luncheon recess was taken.)

AFTERNOON SESSION:

SENATOR GREENBERG: We will reconvene the Committee meeting at this time. There are number of people who want to know how far we are going today, and whether or not they are going to be reached.

We cannot predict with any degree of accuracy how long a particular witness is going to take. No one is going to be cut off, so that I can't tell you how long each witness is going to be.

But, I can tell you that it is the intention of the Chair to break at approximately four o'clock. It is now two-twenty. We have already heard from seven witnesses including the Commissioner. The list is two pages long. For those of you who want to know where you are on the list, Mr. Tumulty at the end of the table will tell you where your name appears, and I am taking them in order. The only deviation from the order that I know of at the moment will be with regard to one more Senator who has just arrived and indicated he wants to be heard, and the procedure of this Committee is to take legislators at the earliest opportunity. Other than that, we will be going down the list in order. Depending on how long you take when you testify, it will depend on how far I can get today. And, our intention is to continue on Monday. So, you can draw your own conclusions on that and how long it has taken to get this far as to whether or not you want to stay. Frankly, if you have something else to do, and you don't want to wait through the rest of the day because you don't think you will be reached, if you are not here when your name is called, we will put it on the list again, and you can come back on Monday, or when we reconvene. That is about the best I can tell you in terms of time. I can't predict with any degree of certainty beyond that.

All right, the next witness scheduled is Ralph Caputo. I might just add this while Mr. Caputo is coming up, and I leave this up to the individual witnesses, people who have prepared statements, similar to those which we have had from every witness with the exception of one, including Mr. Caputo, can rely on the fact that the Committee members will read the statement, if not at this moment, at some point before a determination is made. So, if you wish to read it again, that is, into the record, feel free to do so. Just understand that you are consuming time of yourself and everyone else here. I would therefore suggest that if you could kind of summarize your statement with the understanding that we will be reading it later, you might be saving us all a lot of time, including yourself. Ralph.

R A L P H     R.     C A P U T O: Mr. Chairman, members of the Judiciary Committee I appreciate this opportunity to come before you today, and as a side note, the contents of my thoughts about this very crucial issue is taking considerable personal professional debate, and I take this position which is basically in opposition to Commissioner Burke as the next Commissioner of Education in New Jersey.

SENATOR GREENBERG: Excuse me, Ralph, are you going to identify yourself, and what position you hold, so that the people in the audience know.

MR. CAPUTO: Let me say that I appreciate the process because I have served as a legislator in the New Jersey Legislature, and also I spent six and a half years with the Department of Education in various posts. One of those posts, which I can speak from personal experience in terms of the focus that Dr. Burke has taken in New Jersey was as the Acting County Superintendent in

Essex County, and also as the Assistant County Superintendent, I enjoyed unique experiences from which I have reached certain conclusions.

Fred Burke came to New Jersey in 1974. That was exactly the same time or around that time when the courts had mandated to the Legislature that legislation should be enacted, probably the most important legislation ever to be enacted in New Jersey. I did not and I still do not envy your position during those very, very crucial times. However, the policy whereby the Commissioner of Education had the responsibility to administrate on behalf of the Legislature on behalf of what the court direction was on behalf of what the Constitutional mandates are, were strictly Dr. Burke's. We are talking about specific responsibility. I don't have to remind the Committee how specific. The court maintained a course and what kind of a struggle took place in terms of implementing tax reform and educational reform in New Jersey.

Sadly, the tale of Dr. Burke's record in New Jersey has been a disaster. I can speak from somewhat a different point of view, a vantage point than other people that have testified because I was not only part of the implementation of those policies, I found myself in constant contradiction with those policies.

In the area of school finance, more than anything else, New Jersey needed the leadership, during those periods, to respond and implement the principle of the equal educational opportunity, as stated in Botter. What was Botter about, in layman's terms? It was to equalize dollars spent behind the urban child. We are not talking about T & E as it is implemented in the rural and suburban districts, not that school improvement isn't necessary, but I think we've lost sight of what the court and what the legislative mandate was; to do something about remediating those deficiencies in the urban districts and while we have people coming before the Committee, including Dr. Burke, and say that we need some kind of consensus approach, I submit to you that our teachers and students in the City of Newark cannot get pencils, cannot get paper, go to buildings that are unsafe, operate a system that is inefficient, and I submit that that shows that thorough and efficient legislation is a failure. Whose failure is it? It is the Commissioner's failure. When we needed leadership in terms of school finance that was discussed earlier today, Dr. Burke wavered. He wavered on "cap" laws. He wavered on irregularities, as is reflected in the Newark deficits. When we talk about community involvement, the 1100 people that were laid off because of the triggering effects of Dr. Burke's approach. Community chaos took place.

The children who suffer the most from the problems of New Jersey's educational system are the children of the cities. Fred Burke has failed to exercise leadership in the area of urban education. Instead of standing unequivocally on the principle that children in urban areas can learn and should be expected to do so, and that all steps necessary to assure that they do must be taken, he has conveyed the message that these children cannot be expected to learn even basic skills and the efforts to teach them are futile.

In private conversations with Dr. Burke about my charge to review the educational process in Newark, I personally am disappointed as a citizen. I am personally disappointed as a parent. I am personally disappointed as an educator to find that his response to the deficit education going on in the City of Newark was, do a bureaucratic job in reviewing those schools. It was time for me to leave. He has rationalized and made excuses for the failure of urban education rather than take the steps to correct it.

We know what the problems are. The people on this Committee know what the problems are. We should be beyond the point of identifying problems and moving the Department in a positive direction to remediate those problems.

How many people on this Committee, how many people in the Legislature have read the Task Force Report that was submitted two years ago to the Legislature, to the State Board, to the Governor, to the Attorney General and Yes, to Dr. Burke. Dr. Burke's response was to come up with a remedial plan, a remedial plan that doesn't exist.

He maladministered compensatory education, not only in Newark but in most of the districts in the State. I defy anyone to identify a comp ed program in the urban districts of this State.

He failed to monitor the use of compensatory education and the implementation of remedial programs to insure that money earmarked by the Legislature for remedial and compensatory education would not be diverted to other purposes. That is exactly what has happened. I'm sure that you did not entrust the Commissioner with such vital and crucial legislation to be watered down to a bureaucratic approach to education.

Fred Burke implemented T & E law which was the key instrument of education reform in New Jersey, in a manner that created reams of paperwork, but did not focus on the gross deficiencies that needed correction.

Rather than clearly and unequivocally declaring the responsibilities of local school districts under T & E law, he issued numerous obscure and conflicting directives, which neither local school administrators nor the public could understand. Although he implemented the EIC agencies and the county offices, I submit to you that those agencies, although they may be providing some work, they are not into the essence of the monitoring process.

What is T & E? It is a safe building, a good teacher, good materials. It doesn't have to be as complex as reporting forms that mean nothing and do not deal with the real issue of education.

In violation of the intent of the Legislature and of the regulations of the State Board of Education, he has repeatedly postponed and diluted monitoring, evaluation, and enforcement under the T & E law.

He has refused, except under acute political or public pressure, to exercise his broad statutory enforcement powers under the T & E laws in districts in which education is manifestly not succeeding.

In the area of teacher quality, redundant as it may sound, certification and evaluation efforts have faltered. Teacher morale in the districts in the State of New Jersey is at a low ebb. When teachers are asked to be the comp ed teacher, to be the remedial teacher, to be the classroom teacher, and to go on and on with chores that supplemental staff should have provided.

He opposed efforts to mandate systematic local evaluation of tenured teachers. He has failed to perform his statutory duties to act against excessive teacher absenteeism. Despite repeated requests, he has not even implemented a uniform reporting system for teacher absenteeism.

As to issues affecting women and minorities, in the Department of Education, there has been a poor approach to dealing with affirmative action programs. He has discriminated against employees that have differed with his opinions. He has transferred employees that would rather tell the truth about the educational system than rather accepting positive criticism of local districts. He has tolerated half-hearted implementation of the laws requiring local districts to develop programs to enable non-English speaking children to enter the educational mainstream.

Regarding the operation of the Department, he has not only failed to provide the leadership on a statewide basis, he has failed to provide leadership within the Department itself. He has largely abdicated that responsibility to his recently resigned Deputy Commissioner. I submit to you that his Deputy Commissioner's head is not enough for the citizens and the parents and the teachers of New Jersey.

By depriving the State Board of Education of input from line department personnel, he has made it difficult for the State Board to make independent judgement on important matters. He has failed to take the initiative on behalf of the Department before the Legislature. Rather, again from my personal experience, he has criticized the Legislature, after the fact. His voice should have been heard in the decision making process, not coming back as a post-criticism of issues that he should have been deeply involved in from its inception.

On several occasions, he has acted in excess of the authority granted by the Legislature and the State Board.

He has absented himself from meetings of the State Board of Education on several occasions when controversial matters were to be decided, such as the Newark issue and many others.

He has used outside consultants--and members of the Judiciary Committee, I urge that this Committee, in regard to the misuse of consultant monies through the Department of Education, suspend a judgement on this crucial appointment until a thorough investigation has been conducted by the appropriate authorities, concerning the possible misuse of outside consultants. I'm told that there are millions of dollars in federal funds that filter through the Department of Education. I think we have a responsibility to look into that matter until we make a final decision. May I remind you that this process for review and evaluation of this very important and sensitive position rests within this Committee. In fact, this is the only evaluation of the Commissioner.

Any local board of education, before reinstating any administrator would have to go into some deep analysis of the work and the quality of work that was performed by their administrators. That's our charge today, to look at every issue and to examine the specifics that Senator Musto spoke about, and to analyze whether or not Dr. Burke has fulfilled his responsibility to the Legislature and to the State Board and to the children. I would like to know what discussion has taken place in this room this morning that has been supportive Dr. Burke and has anything to do with the quality of education that is going on in the classrooms in the State of New Jersey today. That's what we have to look at, not the bureaucratic or how good a cabinet member he has been. Who the hell cares. New Jersey is not anyone's private corporation, but belongs constitutionally to the parents, students and taxpayers. Thank you very much. (Applause)

SENATOR GAGLIANO: Mr. Caputo, I'm sorry, I did not hear what your present position is.

MR. CAPUTO: You didn't hear what my present position is? What does that have to do with this? I'll tell you what my present position is, but what does that have to do with anything?

SENATOR GAGLIANO: Just a minute, please, I would like to know whether you are in education today.

MR. CAPUTO: I am an assistant superintendent of the Essex County Vocational School.

SENATOR GAGLIANO: Fine. That was all I wanted to know. Now, with respect to your statement that Mr. Burke's tenure has been a disaster, and referring specifically to your request that the appointment be held over until the investigation can be completed, are you familiar with the details of what happened on that other than what you may have read in the newspapers?

MR. CAPUTO: Let me say this to you, Senator. Obviously, there was a question whether or not the administration of those dollars, at least in one case and maybe some others that I have some second-hand knowledge of, is questionable. From my reports and from the reports in the newspapers, it is being investigated. I am not saying that any criminality took place. I am not pointing a finger at Dr. Burke that he had intimate knowledge of this. All I am saying is that if I was on this Committee, I would not like to pass judgement on a very sensitive position such as the Commissioner of Education until all the facts were before me and I think it is a good approach to at least let those facts come to light before we jump into any situation that we may be sorry for at a later time.

SENATOR GAGLIANO: I would basically agree with you. Now, the thing that I sensed this morning too, based upon the testimony, was that apparently there are a lot of people that think that Commissioner Burke is a good administrator or a good head of a bureaucracy. It is interesting that you said what you did, because I didn't hear too much this morning with respect to his dedication to the education of the children that are in the schools. Now, I guess I was just agreeing with your statement more than asking you a question. But, can you give specifics with respect to where you feel, the gut feeling that you have, that he is not being responsive with respect to the education-- I'm not talking about the bureaucracy or his ability to get along with the chairmen of the committees of the Legislature--I'm talking about the day-to-day education.

MR. CAPUTO: Obviously, a person who is Commissioner of Education must have certain political skills to survive in office. From what I see today and from what I hear today, obviously, Dr. Burke has those political skills. In fact, if I remember correctly, he was hired, or that was one of the highlights of his background, as it was promulgated to the Legislature about the way he would succeed in the office. However, that is one phase of what I believe a good educator has to have in terms of what he needs to do. Those political skills should only be used on behalf of the children and the State of New Jersey. Those political skills should not be a way to insulate or preserve one in office. We are under much more dire need than that in the State of New Jersey.

Coming from a local administrator's point of view and coming from one of Dr. Burke's former employees, I cite to you again that over \$90 million of your money and my money goes into the City of Newark, state money, not federal money, state money raised by the income tax. Dr. Burke asked for an investigation, asked me to lead an investigation into the City of Newark and review the educational process. I set out to do that by using Department staff. Everything in that report was documented. There was 100 pages of documentation that was submitted to him regarding the deficiencies in the way the Newark School Board operated its educational programs. Dr. Burke couldn't care less. That was two years ago. Do you need any more? That was two years ago. That wasn't yesterday. That was in 1977, February of 1977, and I was told that I would never have a future with the Department because I was issuing a report that was contrary to the views of the Commissioner. Now, what does that do for the children and the teachers? What kind of example does that set? Forget our political considerations. What does the district in Warren County say to the Commissioner of Education when an itemized list of documented findings are submitted to him and he ignores them? Why should the small rural or suburban district worry about what the Commissioner of Education has to say about their school district? We had the first test of T & E monitoring over two years ago. What has happened to that report? What has happened to those deficiencies? What action has the Department taken in terms of remediating those deficiencies that exist and still exist? Do you know what they did? They said, "Lay off 1100 employees." (see page 10X for statement)

SENATOR GREENBERG: Any further questions? {no response} Thank you.  
Arthur Thomas?



A R T H U R   T H O M A S: Good afternoon, Mr. Chairman and members of the Committee. I am Arthur Thomas, President of the New Jersey Association of Citizens for Education. We are the parents and citizens from across the State, from Bergen County, South to Minotola and Buena, who have joined together to speak ourselves, for our interests and for our children. Fifteen city and regional organizations banded together to form ACE last year when it became obvious that everybody else was making decisions about our children and our schools--except us. During these hearings, representatives from educational lobbies will speak, Spokespersons for the political parties will speak, businessmen who depend on State good-will and support will speak, agencies who receive State grants and depend on them for their organizational existence or agencies seeking grants will be here, but for one of the few times on an occasion involving education, you will hear from us. We have no other interest except our children, our schools and the quality of education afforded the children in the public schools. Our position before you, I believe, is unique.

For too long we have been the missing element at the table when the decisions are made. The Commissioner has intentionally thwarted our involvement, which was guaranteed by this Legislature in the Public School Act of 1975. This law states that the public schools shall be run in such fashion as to guarantee maximum citizen participation in such matters as the hiring and firing of personnel, the selection of the curriculum, the establishment of the budget, and all other essential matters. That is language directly from the first Title of the Public School Act of 1975. Now, the origin of that language may be a mystery. No one seems to remember how it got to be in the Act. But, we citizens remember it and we are gravely disappointed that it has not been implemented. These mandates go to the heart of sound democratic and educational principles. Guarantee that parents and citizens have a role in deciding who the teachers will be, what the curriculum is, and how the money is to be spent; and ensure that this citizen-parental participation is real--and the result will be better schools and improved educational services for our children.

Of all the paperwork the Department of Education pushed on the school system about T & E, of all the forms forced upon the local districts, of all the guidelines and handbooks bearing the imprimatur of Fred Burke, Commissioner, there is not one scrap of paper that rationally, effectively encourages these rights. For this, we oppose the reappointment of Mr. Burke.

Misuse of resources, disregard of mandates, perversions of sound educational concepts, these are the hallmarks of the past five years of this trusteeship of our children's education.

Some of you are from South Jersey and remember with appreciation, I believe, the Education Improvement Center, South. The good EIC, the agency created by the Department of Education to serve the educational community in South Jersey. Teachers seeking curriculum help, or assistance in techniques, visit the Center. A school board member needs some research and calls. Parents attend a workshop in early childhood education. High School students go to the EIC for in-depth studies in citizenship. That's the way that the EIC, Northwest also operated.

Then came the Burke Administration and an expansion of the EIC's, and let's admit it, the concept of the EIC changed. The Legislature has enacted new law in an attempt to correct the deficiencies in the current functioning of the EIC's. Also, the State Board of Education has posted new regulations in an attempt to correct the malfunctioning of the EIC's. But, as late as two weeks ago, the President of the State Board indicated that he was not confident that these new regulations would ensure proper functioning of the centers.

What's wrong with the EICs now? According to the Assistant Commissioner who implemented the Burke policy, the EICs are instruments for the Department's own purposes, not those of the educational community. What does this mean in practical terms? In the monthly report of the EIC, Northeast for the weeks January 16-February 15, 1978, the EIC director summarized the successes and concerns for that period and noted this concern: the EIC staff is too involved in State Department activities not related to client services. The body of the report notes that the community education staff is caught in this bind and in addition, has had to render acts of service beyond anticipated levels to the Council of Chief State School Officers. "Community education?" That's noteworthy, because at about the same time, on January 10, 1978, the Governor of New Jersey was presenting his "Fourth Annual Message to the State Legislature." His address included these remarks, and I quote the Governor:

To improve the quality of urban life, urban education requires the highest priority. If we are to see a revitalization of our cities, we must strive to make them communities where families would want to live, free from apprehensions about the quality of education that their children receive. The Department of Education will direct its resources to the research, planning and development of ways in which the quality of urban education can be upgraded and absenteeism and vandalism reduced. The Community Education concept, such as we have in Elizabeth and Atlantic City is one such innovation. We need many more creative approaches to respond effectively to the crisis confronting our urban schools.

But, at the EIC, Northeast, in East Orange at that time, Mr. Chairman, right next to Newark, the largest city in the State, the educational resource needed for the revitalization of our urban areas, has a staff that is worried, a staff designated for community education programs, but concerned that too much time is being spent in relation to the Council of Chief State School Officers. This organization is not a governmental body but a private association of the states' educational commissioners. Why are our staff serving an organization based, I believe, in Colorado, when East Orange schools need all the help they can get? During the same period of time, it should be noted this EIC Northeast, had three or more unauthorized bank accounts, with insufficient journals or ledgers to provide accurate financial reports. The Plainfield Board of Education had agreed to the Department of Education request to be the conduit for the EIC funds and to provide financial management for the Center. But, according to independent auditors' reports submitted to the Plainfield Board, the EIC maintained unauthorized bank accounts, had insufficient records of funds it received for hosting Department functions and for sales of State printed materials. The Department maintains that these conditions have been corrected; but, there has not been a full, public reporting in dollars and cents of the financial transactions of this Center. This would be less serious, perhaps, if it were an isolated occurrence. We have already referred to the Star-Ledger, an article by a reporter, Robert Braun, but also in the Star-Ledger there was an editorial calling for an independent Grand Jury investigation of other financial practices of the Department. I noted this morning that questions were directed at the Commissioner of Education about the existence of some of the documents related to that affair. I know that Bob Braun was here and during lunch I asked him, "Do you have those documents?" and he said, "Yes, I do." There is a letter from William Musselman, Director of the Bureau of Resource Management Services on Department of Education stationery, dated March 25, to Mr. Charles Keith, Board secretary, Burlington County Vocational-Technical schools. "Dear Mr. Keith, the attached funding sheet is in reference to the E.P.D.A. project which we discussed last week during my visitation. All expenditures will be approved by our office before submittal to you for reimbursement and processing of checks to career development associates." Here is the request and here is then a letter from Mr. Musselman to Mr. Keith requesting payment of an invoice from Career Development Associates, for \$8,650.00. Here is an invoice from Career Development Associates from

Mr. Worthington to Dr. William Munsel, an Assistant Commissioner of Education, for the \$8,600. The documents are available. I believe that it is highly inappropriate for the Judiciary Committee of the Senate to move ahead with this nomination when these matters are unresolved. The editorial reports that investigations are in progress and you discussed them. The editorial does say that because the expenditure of governmental funds and because key officials of the Byrne Administration play key roles, an independent investigation of the transactions would seem to be in order. A grand jury, with unrestricted subpoena powers and political independence, could perform an important public service by assuming responsibility for the probe. These are matters of the administration of Fred Burke. They should be resolved satisfactorily before acting on this reappointment.

These are not pleasant circumstances. Talking about inspector generals and grand juries is not the usual theme when we discuss our children and our schools. Yet, as Senator Dodd mentioned this morning, Essex County has just had a grand jury presentment dealing with our children and our schools. I have a copy of that presentment with me. Copies were sent to certain members, I understand of the Legislature. This grand jury noted the requirements set forth by the State in NJS 18A and found them inadequate. It also determined, after hearing testimony from superintendents and principals of all the school systems in the county that, generally, school officials will not face up to the drug problem in their schools. The county prosecutor revealed that the grand jury came, in his own words, "perilously close" to indicting several high school principals who, in the face of first-hand evidence to the contrary, claimed no drug problem existed in their schools. Mr. Chairman, East Orange, Bloomfield, and Irvington were commended for their positive active approaches to the problem. However, the grand jury recommended that in one year another investigation be held to see what actions school officials have taken to eliminate the drug problem. What will happen during this year? This drug problem is an epidemic. The report states that Essex County schools have become a "main marketplace and protected sanctuary" for the open sale of marijuana and hard drugs. Even eight year old students in fourth grade are using drugs. The report designates West Caldwell's high school, Montclair, Nutley, all Newark high schools, all of the county's high schools as having a distinct drug problem.

Now, the Governor evaluated the State Commissioner of Education shortly after his reelection. His transition report, a paper prepared by the Governor's staff, an internal document dated December, 1977, called to attention that the Commissioner of Education seemed to function as a "theoritician", that he had little day to day contact with his Department or its administration. I suggest to you that this is still the case; that, in fact, the Commissioner has little day to day contact with the real conditions in our schools, the real problems facing our children, that the drug plague in Essex County is not confined to that county alone, and that the Commissioner is out of touch or is unwilling to exercise leadership to combat the serious, debilitating circumstances of the public school system. He noted this morning that there is a flaw. One of the flaws has to do with drugs. The Governor stated in his 1978 message to the Legislature, "During the past four years, our public educational system has endured periods of crisis, turmoil and change." This is still so. For ten years our State has had a Commissioner of Education from someplace else. We have been served by men with positive national reputations and broad international concerns. Isn't it time we had a Commissioner from New Jersey? We have educators in this State who know our communities, who understand our people. There are education leaders in New Jersey who work daily with all of the educational interest groups, with good results. Let's select a person from

and let's choose a Commissioner of Education who will serve a full five year term. It's common knowledge that the present Commissioner has been interested in other positions. The newspapers have carried accounts in recent years that he has been a candidate in other areas. This is not unusual. On the federal level, a cabinet officer serves an average two and a half years. We need a Commissioner who can move comfortably across this State and call forth from us the very best we have for our children and our schools. On a radio program last Sunday evening, the director of NJEA said that he wished that our Commissioner wouldn't waffle so much and would instead exert more leadership. That's what we need: five solid years of steady leadership. Thank you gentlemen. (Applause)

SENATOR GREENBERG: Thank you. Senator Gagliano?

SENATOR GAGLIANO: Mr. Thomas, if you have been here all day, the testimony goes back and forth from one pole to the other. It is rather polarized. I would appreciate it, having heard you and read your statement, if you could tell this Committee what, in your opinion, the Commissioner has done in a positive way for education in this State, if anything.

MR. THOMAS: He responded positively to the formation of ACE. After we formed our State organization and went to the State Board of Education meeting, we took with us a copy of the Meisner report that they had under consideration. We pointed out to them that in their report, that they had accepted, the conclusion was that remediation and compensatory programming in this State was a shambles and that one of the conditions they felt ought to be addressed was the lack of parental involvement in the schools. The Department had appointed, then, the Technical Advisory Commission to work on compensatory programming. We suggested to them, "Here is a problem; you've identified one of the elements in that problem as being a lack of parental involvement; and you have appointed a committee to work on the solution and you haven't involved any parents in it." The next day, an assistant commissioner's office called us and asked us to recommend a parent to be on that commission and we indicated that because of our constituency, we thought it would be good to have two on and two parents are now on that Technical Advisory Commission. The interesting thing is that we have been there and we learned that we had to put ourselves together, as the other groups in education do, and through our organized efforts, then get participation. We have discovered that even though it is there in the law, we haven't seen it implemented, so we are going to pull ourselves together and insist on it, and I think that's an occasion when the office of the Commissioner, through an assistant commissioner, responded positively.

SENATOR GAGLIANO: Is that the only instance that you can tell us about? How about improving things in the classroom, say, for primary grades?

MR. THOMAS: We have other parents and other colleagues that are going to be speaking to you today and Monday and we didn't want to be repetitious, but I do want to say and hope Senator Shiel will bear me out, if I can compare Newark and Jersey City, and sixth grade in Newark, if you set a standard of 75 for reading skills, only 41% of the children will take the test and exceed 75, and in Jersey City, for a standard of 75 in reading, only 43.7% of the students can achieve above that standard. Now, basically, we object to that standard as being too low. We expect more of our children than this. In mathematics, for the same grade level in Newark, the achievement level for a standard of 65, only 28% of the children can achieve over 65. In Jersey City, 41% can achieve over that standard of 65. Now, that indicates to us that we need to go beyond remediation and compensatory programs, that something right in the very fabric of what's going on in early childhood education needs to be dealt with.

SENATOR GAGLIANO: Just one more question. What is being done, if anything, to correct what you say is wrong? Again, I am now dealing with the Commissioner as an individual. What do you say that he is doing or not doing to correct those problems?

MR. THOMAS: We had, in Essex County, and in Hudson county and in Passaic County, and we relate with other organizations in other counties who go to the county superintendents' offices and go with county monitors into the schools where they monitor the schools according to the T & E standards. By and large, the monitors are doing their job, but we have yet to see developed that something really positive is happening in those classrooms. We have yet to see that happen. Now, we came out early in January with a letter to the Governor suggesting that he appoint a search committee and one of the reasons we did that is because the scuttlebutt that you get ahold of in the educational world indicated to us that the test will be administered in the next few weeks across the state. It maybe easier than the test that was administered last year. Everyone understands that the test that was administered last year was easier than the one before. We don't see a Commissioner of Education saying to the educational community, "Our children can learn." We don't see the Educational Commissioner saying to the teachers, " Teachers can teach. Do your best." I live in Essex County and when I get up in the morning, with my family, and I am sorry to be personal but I will be, some of my children are black, some of my children are white and I know and some of you know if you have been to some of these sessions, that the Commissioner of Education in this State does not believe that black children and minority children can achieve as well as other children can. So, what do I say to my own children? Do I set a different course for my black children? Do I set a different course for my white children? When I live and work in the City, do I expect that because these children are black or Hispanic or a poor white and choose to live in the cities, that not much is going to be expected of us. That's the situation that we have: low expectations; administrators expect low, teachers expect low and third and fourth grade kids are tripping out on drugs. That's what is going on in our schools. So, I find it very difficult to accept another five years of a theoretician who may or may not have his finger on good administration. The Governor's report--if you have not seen it, I have it available for you--the Governor's report on the commission didn't bear that out. The Governor's recommendation was that he didn't seem to get in much trouble. Well, he's going to get in trouble in the next five years because parents and citizens are organized now and we're going to be out there ensuring quality education for our children.

SENATOR GAGLIANO: Thank you.

SENATOR GREENBERG: Senator Musto?

SENATOR MUSTO: No questions.

SENATOR GREENBERG: I have a question that I would like to ask you Mr. Thomas. I am terribly concerned with the report of the grand jury in Essex County. As a matter of fact, just prior to our knowledge of the existence of that report, the Senate was going to vote on a bill, it happened to be Pat Dodd's bill, dealing with the de-criminalization of marijuana. I initially supported that. I then had a conversation with the Assistant Prosecutor of Essex County who was handling the grand jury and without divulging any confidences about the grand jury report, he advised me in general that the situation was horrible, in terms of utilization of drugs in Essex County and I think what I am saying for myself is shared by every member of the Legislature. What would you suggest and I don't say this as way of a challenge, but we are looking for answers. I want to interject and digress for a moment to say that Pat Dodd's bill came down. It was never voted on and in lieu thereof, another study commission has been called for. We all know what the problem is. That is, we all know now, having read the grand jury presentment of the

utilization problem. Forget Fred Burke for a second. What does your organization view as the beginning of a solution to this problem.

MR. THOMAS: We discussed the situation in December, because this year is the International Year of the Child, and we felt that as a coalition of religious organizations, parents' organizations, that we would attempt to make in 1979 a gift to our children for the International Year of the Child and to give them in 1979 drug-free schools. We know the names. We can tell you the principals, the staff who allow these people in the building. Parents know this. They know this from their children. We are prepared to take some action with our school officials, and then the beginning of this year, we learned that the grand jury was sitting. I will say that we have gone to the County Superintendent's office and we have alerted him to this problem and we have discussed possible solutions that we can cooperate with his office on and I will say that he has responded positively. This report makes reference to Mr. George Richardson and his organization as being very helpful to the grand jury, Mr. George Richardson and Ingrid Frank and the National Committee for a Sane Drug Policy. We have a meeting with them Tuesday morning to begin discussing what we can do in Essex County.

SENATOR GREENBERG: You are basically talking about keeping out of the schools the people who are bringing the drugs in? Is that what I understand you to be saying?

MR. THOMAS: And eliminating those school personnel who themselves are involved in that operation.

SENATOR GREENBERG: What do you mean by involved?

MR. THOMAS: We have been told of some schools where some of the school staff themselves are involved in these transactions.

SENATOR GREENBERG: If this matter is still a matter of grand jury proceedings in Essex County, I don't want to go any further with this discussion. Is it, to your knowledge?

MR. THOMAS: It is my understanding that this is their presentment and what they have said is, within one year, we are going to monitor and if there is not a significant change, we will do what we should have done this time, according to the county prosecutor, and that is indict some people and some school officials.

SENATOR GREENBERG: Now, let's go back to Commissioner Burke for a second.

SENATOR MUSTO: You know, I'm listening and I am completely shocked at what I'm hearing, that we are allowing people, you know I just sit here and I just said to Senator Greenberg, "Am I listening to the same thing as everyone else that there is personnel in our school systems that we allow to participate in the drug traffic?" That's what you are telling me now.

MR. THOMAS: Yes, sir.

SENATOR MUSTO: And you know about it?

MR. THOMAS: Yes, sir.

SENATOR MUSTO: The prosecutor knows about it?

MR. THOMAS: Apparently so.

SENATOR MUSTO: And there is nobody being picked up and locked up? I can't imagine this at all. I'm shocked.

MR. THOMAS: Well, I cannot state--

SENATOR MUSTO: Well, if I knew about it and if I knew who they were, I would be down at the prosecutor's office insisting that they get locked up and I certainly wouldn't allow them in our school systems. I'm shocked at what I hear here this morning or this afternoon.



SENATOR GREENBERG: What specific deficiency, or to use the other side of the coin, what specific activity or action does your organization believe that the Commissioner of Education of the State of New Jersey should have undertaken or in fact should now undertake with regard to this problem, as a result of that grand jury presentment?

MR. THOMAS: The Commissioner of Education should say today, "There will be no more drugs in the schools of New Jersey," and mean it.

SENATOR GREENBERG: Who is going to listen to that?

MR. THOMAS: We will.

SENATOR GREENBERG: The children already hear that, for the most part.

MR. THOMAS: I don't think they do. That's the sad part of this report and we have moved beyond marijuana according to this report to what are called hard drugs. You see, the difficult part of this discussion--

SENATOR GREENBERG: You see, if you said to me, "The Commissioner should tell the various principals, through the superintendents, etc., to crack down on this," when it is not, in fact, being done, I couldn't agree with you more. But, for somebody to stand up and make a speech doesn't make any sense.

MR. THOMAS: That's what I'm saying to you sir. The difficulty with this is that from a parental point of view, the crisis is just as bad in reading and writing. The schools are a disaster in reading and writing.

SENATOR GREENBERG: I agree with you. That's as difficult a problem as, in my judgement, as the use of marijuana or any other drugs and I think the Committee is terribly, terribly disturbed. The question of where the fault lies, where there is blame and how you correct it is an entirely different problem. Forgive me for getting into the narcotics, but I was particularly interested in that because it is the county from which I come and I was shocked by the presentment, as Senator Musto was and everybody else.

SENATOR MUSTO: What I'm shocked about, Mr. Chairman, is that if we know there is a principal or anyone else dealing in the drug traffic, he should be picked up and locked up and if he is teaching in the classroom, he should be taken out. Now, you don't need the Commissioner of Education for that. I don't know how he is supposed to know anything about that at all. It is common sense. You don't allow that to go on. If anyone here is allowing that to go on without reporting it, I say shame on them.

SENATOR GREENBERG: Senator Gagliano?

SENATOR GAGLIANO: Obviously, this type of thing just doesn't happen in one county and if it is in Essex, it is in Monmouth and Ocean and many other places. In fact, one of the mayors in Monmouth County asked the local prosecutor, I heard it on the radio this morning coming here, to make an investigation of the local schools in Monmouth County. Would it make any sense to you if we called for a State Grand Jury investigation of this problem, that is the drug problem, from the standpoint of having an across-the-state, across-the-board look at it. In other words, if it is an epidemic in one area, it might be an epidemic in the whole state and if it is, I think everybody should know about it and recognize it as a problem and not just say that it is Essex.

MR. THOMAS: It would make sense to me, Senator, particularly if we had a Commissioner of Education who would respond as Senator Greenberg has suggested. He can do that now in Essex County. If there was then an investigation in Monmouth County and we had a Commissioner of Education who would exert leadership, I think it could be dealt with in whatever county.

SENATOR GREENBERG: As a result of the grand jury presentment and what you read, did your organization have any contact or make any contact with the Commissioner's office concerning this particular problem?

MR. THOMAS: We went directly to our County Superintendent.

SENATOR GREENBERG: What happened?

MR. THOMAS: He responded positively.

SENATOR GREENBERG: What did he do?

MR. THOMAS: We indicated to him some schools, specifically, where there is a problem. We discussed the fact that the grand jury was in session. We discussed the program where we thought about identifying school personnel, making sure they were dismissed or appropriate action was taken, and that inappropriate people be kept off the school grounds and we indicated with each other that after the grand jury presentment was in, we would meet and attempt to implement this.

SENATOR GREENBERG: Have you done so?

MR. THOMAS: No sir. This just came out this week.

SENATOR GREENBERG: Okay. Any other questions?

MR. THOMAS: May I add one more comment, because I think Mr. Caputo touched on this and I think the characterization of some of us who are speaking with you today and in the next few days, when you put together the drug problem, the educational problem, and the unemployment problem-- We were in Jersey City in a public meeting with Micheal Ross, the Superintendent of Schools and in discussing the minimum basic skills problem, and in Jersey City and there was some discussion about the allocation of the State funds for compensatory programming and it was the general understanding that those funds, instead of buying compensatory time, were, in effect, paying for regular salary lines. The Superintendent said, in effect, as quoted I believe in the Jersey Journal, in effect said, "If I am pressed on this, we will have to fire teachers." In other words, the Commissioner's office through the County Superintendent's office, have approved an inappropriate use of compensatory funds. So, the children in Jersey City were not getting the compensatory education that they should have. But, if you press that, the immediate result might be the dismissal of teachers. Now, we're not for the dismissal of teachers. We have further institutionalized our cities, where our minorities are becoming increasingly alienated from the rest of our metropolitan area. This is why we need a Commissioner of Education who can move from rural and suburban areas with ease and with comfort, exerting leadership, so we don't have these things continuing, the denegration of our urban areas. If you look at Newark and if you have been there lately, you can see that the master plan is to move the population out of Newark and it has got to go someplace. So, we need leadership who can bring us together in this State.

SENATOR GREENBERG: Thank you, sir.

The next witness will be Senator Charles Yates from the 7th district.

SENATOR CHARLES B. YATES: Mr. Chairman and members of the Judiciary Committee, for the record, I am Charles Yates, Senator from Burlington County and I would like to indicate that I am serving in my eighth year on the Appropriations Committee, I served four years on the Taxation Committee and I now serve on the Senate Education Committee, all of those being committees that have, at different times, had a close working relationship with the Department of Education and with Doctor Burke during his tenure as Commissioner of that Department.

I would like to address myself to two points, really. The first concerns the question of the Senate's role in the advise and consent authority in the Constitution on appointments of the Governor to his Cabinet. There are, it seems to me, two opposite extremes that one could use to characterize the proper role of the Senate. One school of thought would say that it is the Senate's role, in confirming gubernatorial appointees, to make sure that policies of the Legislature are reflected in the nominees to the Governor's Cabinet, that this represents our opportunity to make sure that those cabinet nominees serve the interest that we believe to be primary.

The opposite school of thought would say that it is the role of the Legislature to screen the nominee from the point of view of moral correctness, personal honesty, any gross defects of character and in the exception of those instances, otherwise, rubberstamp the Governor's choice.

I would like to, respectfully, submit to the Judiciary Committee that the desirable relationship, in fact, clearly must lie somewhere between those two extremes. It is not the Legislature's role to name the cabinet members themselves or to use the exercise of our advise and consent power as a way of guaranteeing that we get the man we want, as opposed to the man that the Governor may want. We have had instances in the history of this country where the legislature took that position in opposition to the Executive, the case in point being the impeachment proceeding of President Johnson shortly after the Civil War, where the Congress had a very strong anti-southern feeling in the way that they wanted the affairs of the State conducted and the President, being a Southerner himself and having succeeded President Lincoln felt a reconciliation was in order. The President found himself at difference with a member of the cabinet and proceeded to fire that member of the cabinet and the Congress impeached the President because that cabinet member, they felt, was there to represent Congress's desires and the President, of course, said, "It's my cabinet, I need men that I can work with and this man does not represent my policy and he can not serve in my cabinet." As it happened, that contest was very closely decided in a historic judgement in favor of President Johnson, so closely that perhaps you might say that it doesn't represent a valid basis on which to make any general rule. I would like to suggest that the judgement of history has been far more overwhelming than the very close victory in the Congress and the judgement of history is that the Executive does, in fact, within reasonable restraints, deserve the opportunity to put together an administration that is made up of people that the Governor feels will work for and represent and create the policies of that administration.

Now, in this instance, I think we have to use our own judgement. We are not going to go to either extreme, but I think the Senate does have a responsibility to look to the policy considerations; where has education been going in New Jersey; how well do we feel that this Commissioner's conduct in that office does represent the broad desires of the people of the State? But, I think we also have to give serious thought and a serious degree of respect to the underlying issue of the Governor's right to have an administration made up of people that are conducting policy in the manner he wants it conducted.

In this instance, I think we have to recall that this Governor has had a first term, during which the same Commissioner we are talking about today has served as Education Commissioner, and during that first term, the greatest degree of change occurred in the sphere of education. The greatest degree of controversy and enormous piece of legislative work was undertaken and in campaigning for reelection, the Governor's success in that reelection depended or hinged very largely on the public's judgement as to whether or not that entire program, the refunding, the changes, the restructuring, the T & E bill, this was the meat of the campaign. This was the heat of the debate. This where the public had their attention drawn when they made their judgement then in either denying or affirming an additional term for the Governor. I think we have to bear in mind that the Governor was substantially endorsed. The Governor was re-elected by a significant margin. The people of this State, full well aware of the significance of the T & E law, the changes in the funding formulas, the many, many controversies that had been handled in the administration, endorsed the Governor's program and I think, on that basis, that this Committee has to give some considerable weight to the Governor's desire in saying, "I would like that same man to continue to handle this administration's development of policies in education."

Now, having said that, we should pay a great deal of attention to what the Governor wants, I would like, to some extent, contradict myself by now addressing the other side of the issue: The question of how good a Commissioner has Doctor Burke been. My perception in this matter is that of a legislator. My connection with Doctor Burke is that of a legislator. One of the first areas I would like to address myself to is the relationship between the Department of Education under Dr. Burke's direction and the Legislature. I would like to say that I found Dr. Burke to be sensitive to the enormous complexities of his responsibility. I believe that he has been an easy, accessible, open and flexible person to deal with in dealing with the legislative process. I have never had any difficulty in acquiring access to the Commissioner's office or to the Commissioner's ear on matters that I felt were important and I have, in fact, on other occasions, been sought out by people in the Department of Education for input in areas where the Commissioner wanted to know what we thought, at his initiative, something, which I'm sure that any legislator recognizes, is relatively unusual in dealing with a Cabinet officer. I would like to go on then by suggesting that to measure Dr. Burke's effectiveness, not so much in dealing with the Legislature, but in dealing with the problems at hand, I think we can clarify the issue considerably by backing away from a lot of the minutia and the particularities and the specific instances that have been discussed here during the course of the day and look, instead, at a distance perhaps, at the truly enormous changes that have occurred in legislative, education legislation in this State in the last five years. No state has, as yet, so thoroughly addressed the question of restructuring of governance and financing of public education than has the State of New Jersey over the past several years. We have, for example, increased the level of state support to our public schools by some three quarters of a billion dollars over the space of several years. We have substantially reduced the degree of disparity in local tax effort and local funding levels; substantially reduced, not altogether eliminated, but certainly a tremendous degree of change in that area. We have made very substantial changes in the method of governance of the local school district, with some very specific purposes in mind. The first is the substantial increase of local citizen participation in the determination of curriculum direction. Second is to provide a method for identifying, by local citizen participation, those areas of program inadequacy that the parents, teachers and children feel are inadequate. Thirdly, a method of governance requiring the districts to devise and implement specific programs aimed at

overcoming and addressing the specific inadequacies identified. Our state is doing that. This process is working and working in the districts that I represent right now.

They also, in the Department of Education, have restructured the reporting methods between the local districts and the State Board of Education and contrary to most people's opinion of this matter and I know that no one is going to believe me when I say this, the Department of Education has significantly reduced the number of forms that have to be filed, the amount of data that has to be collected as part of the State's proper role in governance of the school districts.

We have just begun, over these last years as well, to measure skill levels of the student population in order to develop for the first time a data base that enables us to see how we are doing and where we are going. In fact, the changes over the past several years have been so many that I think it would be almost foolish to try to provide you with a catalog or enumeration of all of them. But, the simple, unavoidable truth is that over these past years education in New Jersey has been undergoing dramatic movement and is undergoing movement, in fact, right now. Many, many whom appear before this Committee may disagree with particular facets of the changes that we are now encountering and indeed in the educational community itself there is substantial disagreement and debate as to which direction is the right direction in each particular instance of crisis that we are dealing with. But, the simple fact remains that there has been great change and that the Department of Education under Dr. Burke has been at the central focus of that most difficult period for education in the history of the State. You can not say that Dr. Burke has been ineffectual. It would be silly to say that the Commissioner has failed to lead when never previously has any commissioner directed so great a degree of change in so short a period of time. Now, I believe that all of this change was carried out in the most sincere belief by all of us participating in this change that we are working for the betterment of the schoolchildren of the State of New Jersey and Dr. Burke has been the leader of that movement and I believe that he deserves the Senate's confirmation. Thank you.

SENATOR GREENBERG: Thank you, Senator. Senator Gagliano?

SENATOR GAGLIANO: No questions.

SENATOR GREENBERG: Senator Musto?

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Thank you.

Mr. Konstantinos?

K. K I K I K O N S T A N T I N O S: Mr. Chairman, I am Kiki Konstantinos, Superintendent of Schools, Lenape Regional High School district and President of the New Jersey Association of School Administrators.

The New Jersey Association of School Administrators supports the confirmation of Dr. Fred G. Burke as Commissioner of Education.

Dr. Burke has served as Commissioner of Education during five years of unparalleled change in New Jersey education. The vast changes which occurred created the most crucial and critical five year period witnessed by any state department of education in the nation. Although many significant programs were initiated, much more must be accomplished and completed. The State of New Jersey, at this time, requires a commissioner of education who understands the vast complexities of the problems and can successfully develop satisfactory solutions for the ultimate benefit of the children of this State.

NJASA believes most strongly that education is of the utmost importance to the State and nation because of its effect on the future workers and leaders of America. Therefore, it is imperative that the commissioner of education be a statesman

and an advocate for children and education. He must be capable and willing to speak against and help discourage political partisanship in the education arena--sometimes at the risk of opposing legislators and, yes, even the Governor. The Commissioner, therefore, must be equipped to meet the challenge; he should be a man of intellect, with a background in the field of education. He should possess a sense of political and educational knowledge in New Jersey and an ability to deal with persons in politics. As an Advocate for public education, he should be removed from partisan considerations. Perhaps in the near future, a re-evaluation of the term of the Commissioner, eliminating the current multi-term concept in favor of a single six or eight year term, and the method of appointment or selection of the Commissioner should be considered.

NJASA supports Dr. Burke because it feels that he can effectively provide the stability and continuity that is absolutely necessary during the next five years. School districts need stability for the continuing implementation of a thorough and efficient education. NJASA believes that the reappointment of Dr. Burke will provide such continuity and stability.

Dr. Burke has sought out and made himself available to all segments of educational and interested public groups in an effort to improve an understanding of the current educational scene. He has demonstrated an ability to work cooperatively with the Governor, the Legislature, State Board of Education, and many public and educational constituencies in this State.

There is an imposing array of major programs that have been initiated by legislation and departmental action in response to the avowed desires of the general public. Dr. Burke provided the impetus to set these programs in place. He has led in the implementation of the following:

- 1) Installation of the "Thorough and Efficient" mandate which defines a thorough and efficient system, establishes accountability to all levels, allocates most state aid on district wealth, and focuses on improved management and planning at the local level.
- 2) Established a comprehensive and decentralized system of supervision and monitoring of local districts and schools with major responsibility to the County Superintendent of Schools.
- 3) Developed a management and reporting system that provides the executive and legislative branches of government with the data necessary to make educational policy decisions.
- 4) Initiated a Program Oriented Budget system that is being phased in at the local district level to provide more useful management data.

Dr. Burke has also extended effective leadership in his efforts to develop:

- 1) An effective rapport with the major educational leadership associations
- 2) An Executive Academy, a program designed to orient educators in the workings of the Department of Education as well as providing a forum for the exchange of views.
- 3) Acquired significant increases in federal funding for New Jersey education.

Dr. Burke has also worked extremely hard in establishing a system to effectively deal with education programs and issues such as:

- 1) Basic Skills programs to identify and assist youngsters to improve their achievement in reading, writing and mathematics. This led to the establishment of "Minimum Standards" and "Compensatory Education" programs to improve the basic skills of many youngsters who were previously overlooked.



- 2) He increased the preschool handicapped children services dramatically.
- 3) He initiated specific activities and programs to work with Urban Educational leaders to meet critical urban priorities.
- 4) He initiated a task force to investigate violence and vandalism in the schools.
- 5) He has the Department working closely with the field in an effort to implement the newly developed parent-teacher evaluation regulations.
- 6) He is now working with and supporting legislation on minimum high school graduation standards.

It is our opinion, given the type of financial and political constraints place upon anyone serving the dual role as Commissioner of Education and a cabinet member, that Dr. Burke has comported himself well. He has done as well as anyone could in his desire to satisfy the many competing constituents in the educational arena over such issues as:

- Local control vs judicial and legislative mandates
- Tax relief through CAPS vs sustaining and improving school programs
- Categorical funding vs equalization aid
- Declining enrollment vs rising costs due to inflation
- management vs employee associations

Many groups, including our own association, feel Dr. Burke has not satisfied our particular vested interests totally. However, each of us must admit that he has listened to us, and on balance, Dr. Burke made decisions he felt appropriate for the entire state within the parameters of State policies, available resources and many other constraints.

Therefore, the New Jersey Association of School Administrators urges the Senate to confirm the Governor's nomination of Fred G. Burke to serve a second term as New Jersey Commissioner of Education. Thank you.

SENATOR MUSTO: Thank you sir. Any questions?

SENATOR GAGLIANO: Referring to page four, Mr. Konstantinos, middle of the page, you indicate there that Dr. Burke has comported himself well, he has done as well as anyone in the major areas and then you list them, five of them, But I guess I have to ask and I am sensing the polarization here of certain people thinking that Dr. Burke has done a fine job from the standpoint of being in politics, running the bureaucracy, but you don't say here, and you're an educator, that he has done an outstanding job of getting the information necessary down to the trenches where the teachers are to give a better education. I don't see that here. I really don't see it in your statement. Do you really feel that he has?

MR. KONSTANTINOS: I think it is implicit in the litany of things that I had mentioned. I had cut a number of things out because a number of people had spoke about them. I think it is implicit that if he has successfully implemented the T & E mandates, the Basic Skills Program, the Compensatory Education Programs, that is a feed to the local districts and the leadership to them in a sense of implementing programs that will assist children.

SENATOR GAGLIANO: Has it happened yet, in your opinion?

MR. KONSTANTINOS: I think it has in many instances. I think what occurs here as I listened from ten o'clock or ten thirty this morning, you're talking about a very complex and a highly compound and impacted situation as education and people are applying simplistic terms and simplistic solutions. I think our propensity is to paint the whole State with the brush that might only cover a small swath. In other words,

there are problems, there are horror stories, there are tales I can tell you, but that is not true in 95% of the schools in the State nor with 90% of the children in the State, and as far as I am concerned as a practitioner, if unefficient education was occurring in my districts and in the districts where I am familiar and what we have been asked to do is to describe that in terms other people can understand. It has been affected and improved through the Basic Skills standards and I think with some of the other departmental rules and regulations, such as ten year teacher evaluation of student progress components, etc. I really believe there needs to be a period, in the next five years, of time for us to let all this settle and for time to prove that it is working. We all want to rush and have instant success on these levels and it is very difficult.

SENATOR GAGLIANO: As an administrator and as President of the Administrators' Association, have you ever felt that there was any indication that if, for example, one of your pupils stepped out of line, so to speak, that there would be a reprisal for any reason, based upon the operation of the Department as you know it?

MR. KONSTANTINOS: No sir, to the contrary. As an administrator and in the officership of the Association for the past three years, we have sat with several of our people and the senior staff and Dr. Burke on a monthly basis and in his office discussing the issues of the State and he has sat in our meetings. He has been very accessible and very available and I found him to more than acquiescent to the problem. I have never known him to make a direct threat.

SENATOR GAGLIANO: Does he make indirect threats through another member of his staff?

MR. KONSTANTINOS: No, sir.

SENATOR GAGLIANO: Did he ever make an indirect threat against a superintendent by the name of Frank Cane, that you know of?

MR. KONSTANTINOS: I think there was a comment made facetiously about a monitoring situation where somebody was quite concerned about monitoring and a comment was made about, "Perhaps we ought to go down and do a job on an audit situation." But, that wasn't from Mr. Burke.

SENATOR GAGLIANO: It was from one of his top assistants?

MR. KONSTANTINOS: Yes, sir. I didn't accept it as a threat knowing the people on a personal basis.

SENATOR GAGLIANO: I happened to be involved in that and that is why I asked. That's all I have.

SENATOR MUSTO: Thank you very much, sir.

SEBATOR GREENBERG: Thank you.

The next witness this afternoon is Stephen Eisdorfer.

S T E P H E N E I S D O R F E R: Mr. Chairman, and members of the Committee, I first want to thank you for your patience and your tenaciousness in sitting through a long day of hearings and I admire your toughness in being willing to sit through several more days.

My name is Steve Eisdorfer. I am an attorney and I am Acting Director of the Education Law Center, a public interest law firm that represents the interests of school children and their parents in New Jersey. Today, I am appearing not in my capacity as Director of the Education Law Center, but in my capacity as a private citizen, as a citizen who has had a peculiar opportunity to observe the conduct of Fred Burke over the past several years and as a citizen who cares very much about the fate of public education in New Jersey.

SENATOR GREENBERG: Can I interrupt you to inquire whether or not the Educational Law Center intends to make a statement with regard to this nominee?

MR. EISDORFER: Well, the Education Law Center, under I.R.S. rules can not and will not take positions on partisan political issues.

SENATOR GREENBERG: So, we should not assume that you speak on behalf of that organization.

MR. EISDORFER: That's correct. I'm here on a vacation day, speaking for myself.

We have heard a good deal today about the tremendous challenge that Fred Burke has faced over the past five years, a challenge of a new legislative structure, a challenge of dealing with a controversial court mandate, a challenge of dealing with educational problems, which are not peculiar to New Jersey, but are nation-wide in scope and are very serious. But, with that challenge came an enormous opportunity. Fred Burke came to a state in which the public was mobilized and concerned about problems of public education. He came with a uniquely powerful mandate both from the courts and from this Legislature to initiate reforms in the quality of education in this State. It was a challenge that demanded unusual personal characteristics. It demanded vision, leadership, executive ability, diplomacy, an appreciation of serious and fundamental educational problems. Most of all, it demanded an unequivocal and unbending commitment to children in New Jersey.

Now, after five years as Commissioner of Education in New Jersey, I would like to be able to say, with appreciation, that he has met these challenges, that he has seized these opportunities, that he has exerted the leadership that we needed to deal with these troubled times. I'm afraid that I have to say that he has not. On the whole, I think I would have to say that he has failed to exercise the leadership we need. He has been responsive to everybody but the interests of children. He failed to exercise a meaningful commitment to education in urban areas. On the whole, he has buried the mandate for a "thorough and efficient" education under a welter of opaque and often incomprehensible rhetoric. I think the children and education have suffered as a result.

Now, I have a list of specific instances in my statement. I don't want to go through that list because the hour is late. Let me just give three examples and talk about them in a little bit of detail, because I think they are illuminating from a number of points of view. They are illuminating because they illustrate ways in which the Commissioner of Education has disregarded or distorted the mandate of this Legislature and of the Courts, in which he has failed to lead in the implementation of the policies of this Legislature, in which he has displayed a lack of concern for education in urban areas.

One such area, I think is the area of compensatory education. If I may let me just give a very, very short chronology. The Compensatory Education Program was set up in the Fall of 1975 to take effect starting July 1, 1976. For a whole year there was no planning in the Department of Education, that is from September of 1975, when the statute was enacted, until August, 1976, there was no planning in the Department of Education. They simply had not the foggiest notion of what was going to be done with the money when they got it. In August, 1976, one month before schools were supposed to have these programs in operation, hastily they put together some guidelines and said to school districts, "You have two weeks to get these programs in operation." Needless to say, the school districts couldn't do it. It was the school districts and the children who felt the default in planning.

This decision had a consequence the following year because the amount of money that the school districts was supposed to get was supposed to depend on the number of children they had enrolled in September, 1976 for those programs.

As a result, the Commissioner felt obliged to approve programs not on the basis of actual operation, but on the basis of paper representations. He made what was called a desk audit, which means you look at the papers and if the district promises to have programs in place, then you treat it as if those programs were really there. In fact, many districts made promises that they couldn't keep, were not prepared to keep, and in some instances, had no intention of keeping. But, there was no way that the Commissioner could or did investigate that.

The following year, he used a different formula for allocating compensatory education aid, one that had only the most tenuous connection with the statutory requirements and which, apparently to his surprise, turned out to divert that money in large measure from urban districts, who have the most children in need of compensatory education, to more affluent, more suburban districts that had less serious needs. When this was brought to his attention, through a series of memos from his staff, he issued a press release and his press release said, "This is really a terrible thing, but the Attorney General made me do it." When the issue was challenged in court, his statement to the court was, "Well, I think this is a pretty sound and reasonable way of running the Compensatory Education Program."

Now, what are the morals from this little story? I think there was a disregard for the issues concerning urban education there. I think there was a disregard for public opinion and I think there was what, for lack of a more charitable word, I would have to call duplicitousness, in the handling of the Program.

Let me give another very quick example. We have heard various accounts of the role of the Commissioner in the implementation of the Basic Skills Program. It has previously been noted that he opposed the idea of minimum standards. Initially, he opposed it for two reasons. He said that it was neither feasible nor desirable. He said that it was not feasible despite the fact that New Jersey already had in place perhaps the country's most sophisticated testing system for evaluating accomplishments of school districts on a state-wide basis. Subsequently, he decided that it probably was feasible. He said it wasn't desirable and he was very explicit on this issue. At a meeting of the Joint Committee of the Public Schools and State Board of Education, he explained why he thought it wasn't desirable. He said that it was unfair and not realistic to expect that children in urban and minority school districts to be able to learn the kinds of basic reading and writing skills that we were calling for here and he said that it was unrealistic to expect that those school districts would be able to teach those children those skills. That, I put to you, is a shocking statement. I think it is a statement that is informed. These are actions of the Commissioner in the area of basic skills throughout.

Since then, the Legislature, over the Commissioner's objection, mandated the implementation of the basic skills program. The Meisner Report described the implementation of Basic Skills as a shambles. It said that it was disorganized, that no one really knew whether the remedial programs were being implemented and called for radical changes. This was just a few months ago.

Let me give just one more area selected from my list here. That is the area of T & E implementation. Now, I happen to think that the accountability provisions of the T & E statute are a model set of provisions. They are a tribute to the good judgement of the Legislature in responding to the mandate of the State Supreme Court. They are provisions that not only give the Commissioner powers, but they impose on him

specific duties and we have heard a good deal more about the powers than the duties over the past five years. The specific duty that they impose is the duty to annually evaluate all schools, to ascertain which schools are making sufficient progress toward a thorough and efficient education and to take a series of steps spelled out in the legislation itself when it is determined that a school district is not making sufficient progress. This is spelled out in Sections ten through fourteen in Chapter 212. The Commissioner has found nothing but a series of excuses for not carrying out this duty. He has diluted and distorted this enforcement responsibility. There is no list. There has been no determination of which schools have been making sufficient progress toward a thorough and efficient education, despite the fact that the legislation calls for the Commissioner to make a report to the Governor and the Legislature on that very issue this Spring. He has postponed this obligation one year, then three years and he has issued confusing and contradictory statements to the public and to local school administrators. So, in many cases, they don't even know what the Commissioner expects of them. I have great sympathy for the conscientious superintendent who says, "What is it you want me to do?", because there is no way he can tell from the repeated and conflicting directives that come out of the Department of Education.

Two years ago, my Office put together a handbook for parents trying to interpret and put into non-jargon language the present state of T & E implementation as understood by the State Department of Education. I am still getting calls from school administrators saying, "we just got a copy of your handbook and this is wonderful, this is the first time we actually understood this process," and I have to explain to them that that is two years out of date; there has been X number of drafts since then that contradict what was said there.

I suggest to you that just looking at these three examples, and there are many more that could be given, we do not see a picture of good leadership. We do not see a picture of concern for urban education. Ultimately, we don't see a picture of concern for children. I urge you to reject the nomination of Fred Burke. I say I have no reason to doubt Dr. Burke's either personal integrity or his subjective good intentions, but honesty and good intentions are not enough. The children of New Jersey need something more than that. Thank you. (see page 16X for statement)

SENATOR GREENBERG: Thank you, Mr. Eisdorfer. Are there any questions? (no response) Thank you very much. It is now four o'clock. We are going to adjourn until 9:30 on Monday. Thank you very much.

(Hearing adjourned)



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STATEMENT BY

Assemblyman Daniel F. Newman (D-9th Ocean)

Submitted to the New Jersey Senate Judiciary Committee

MARCH 15, 1979

re: Fred G. Burke, Phd.

Nominee for reappointment as Commissioner of Education

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

Let me express my personal appreciation to you for granting me this opportunity to testify before the committee regarding your present deliberations on the Governor's nomination re-appointing Dr. Fred Burke as Commissioner of the Department of Education.

I have come here today to support the reappointment of Commissioner Burke. I do so for a number of reasons which I hope to outline for you.

The first of these reasons is evident by the number of people here today requesting an opportunity to express their opinion on this nomination. This is testimony itself to the intense interest created by education issues in this State.

Some may view the attention given to Commissioner Burke's





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reappointment as evidence of the criticism and controversy associated with his first term. I do not share that view however.

New Jersey's most recent public education law, the 'Thorough & Efficient' law which this Legislature agonized and struggled to set in place requires our education system to be open. Indeed, I feel confident in saying that we are the most open educational system in this country today. It is for this reason that every issue in education develops intense discussion. I need only point to the issues of graduation standards, minimum basic skills, compensatory education as examples of issues which have created intense discussion both pro and con, before this Legislature. In short, the reason why we have this kind of controversy in education in New Jersey is because we have established a truthful program. Achievements in public education in this State are public knowledge and so are our failures. It is through this public process, established by law, that we hope our citizens and their elected representatives can diligently address and resolve pressing problems.

I mention this because the process should be no less



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open for the consideration of a choice for Commissioner of Education.

I should like to emphasize that what some might consider controversy or opposition to the Commissioner's reappointment is part of a process this Legislature has established. I believe that to be a positive process and consistent with the method we have chosen to guide our educational system.

Let me speak for a moment of another reason why I feel the Commissioner deserves the Legislature's favorable consideration.

Under his tenure at the Department of Education, he has consistently implemented a program of access and availability to his office and the divisions under his authority. It has been my experience that the Commissioner has shown a great respect for the Legislature and the public in general. Any member of this Legislature need only seek his Department's assistance and they get a response. Even when that response is one that appears to do injustice or violence to the Department's own policy position. This type of accessibility is difficult for any Commissioner but Commissioner Burke especially should be commended.

He has established a policy of cooperation and has seen



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to it that those who carry out educational policy in his Department have followed the same course.

There are those who will suggest that the time to replace the Commissioner of Education is now. This expression of urgency is based upon their beliefs and their perceptions related to the implementation of New Jersey's newly enacted public education law. I believe firmly that the course of T&E implementation and the Commissioner's action in setting that course is the strongest reason for his renomination.

Replacing Commissioner Burke at this juncture in the implementation of the T&E law would, in my opinion, be a serious mistake. There is no question that the Commissioner right now is the most informed individual in this regard

in the State of New Jersey. To break the chain of philosophy which presently exists in the Commissioner's office and throughout the Department of Education in implementing the T&E law, would be a serious blow to the sense of continuity that has been re-established in the education community within this State.

We as Legislators are well aware that a new Commissioner, whether it be in the Department of Education or in any other



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Department of State government, is not always the answer in our attempts to resolve persistent problems. You and I both know, gentlemen, that the bureaucracy remains entrenched. Commissioner Burke has been an administrator who has proved to us that he can overcome the frustrations of the bureaucracy and interject the type of spirited concern which is necessary to make progress in governmental affairs.

Gentlemen, you know as well as I that the public and the Legislature have often been disappointed after having accepted the philosophy of change as a fresh approach only to find that policies and programs remain unchanged.

Commissioner Burke has weathered the storm of five turbulent years in the history of New Jersey education. The philosophy of his tenure and the Department is now together. To seek change for the sake of change itself or far worse, because of the bitterness of any given special interest, would in my opinion do irreparable harm to a process which this Legislature has nurtured to the brink of fruition.

Let us consider for a moment some of the critical issues which have faced this State's educational community and the role of Commissioner Burke in guiding our policy. We have



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heard the cry of his neglect on the issue of declining enrollments and rising school costs. Indeed it is an issue which many citizens and this Legislature must concern itself with. However, we must not begin discussion of this issue without acknowledging the political realities.

New Jersey has tenaciously held to its philosophy of home rule. This is particularly so in the area of local control of educational matters. Faced with the hard decisions of school closings and regionalization of school facilities as a method of reducing overall education costs in the light of declining enrollments, would the critics of the Department of Education conveniently suggest that this become the Commissioner's entire responsibility? Would the people of this State and the members of this Legislature accept such intervention by the State's chief education administrator?

I suggest to you, Gentlemen, that this issue squarely rests with the members of this Legislature and those closest to the administration of local school districts.

In the structure of the public education system in this State, the Commissioner has a clearly defined rule to implement the public policy as determined by the administrative mechanism



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of the Executive and the Legislature. Indeed, in recent years and under Commissioner Burke's direct administration, the system of educational improvement centers prompted originally by federal government policy has broadened and improved. A \$25 million bond program for the construction of special schools for handicapped children in this State is now on the verge of realization. The most recently enacted \$100 million bond issue to assist local school systems in capital construction projects is receiving immediate attention unlike a similar bond issue of the late 1960's.

Just to note the type of staggering pressure under which we have our Commissioner of Education operate, this Legislature passed a \$100 million bond issue for local school construction as a part of what we felt was our responsibility. There presently exists and the Commissioner must decide on \$800 million worth of applications under that bond program. Which one of us would tackle such a monumental task of prioritizing needs?

On yet another issue, I would like to bring to your attention, that of Cap waivers to local school districts. After the enactment of the New Jersey income tax and the establishment



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by the Legislature of the property tax relief fund, a massive infusion of State aid to local school districts precipitated our action in limiting the amount of budget increases. To implement this program of Caps, we assigned the Commissioner of Education the unenviable task of reviewing individual circumstances surrounding school budgets. This year local school districts requested \$30 million in additional spending over and above their Caps. The Commissioner recently approved only half that request and this amount is less than the two previous years. Commissioner Burke has established a pattern of intense fiscal scrutiny which this Legislature intended.

In conclusion, Gentlemen, the issues brought before this committee in relationship to Commissioner Burke's nomination and reappointment will seem to be immense and insolvable in nature. Commissioner Burke will receive a great deal of criticism as to the role he has played in trying to resolve these issues. But in my opinion there is no man better suited in temperament, in ability and in his dedication to the children of our State than the present Commissioner of Education. I would request your favorable consideration for nomination for reappointment as yet another commitment by this Legislature





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to set a course of future improvement for our educational system. This Legislature and the Commissioner himself have demonstrated in the past our willingness to meet the complex challenges of education. Our State's educational system is now being viewed as a model for emerging awareness and ability to meet the goals which we set for ourselves.

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After considerable personal and professional debate I feel compelled to speak my mind on the crucial issue before us today. As a former Legislator, Department of Education Administrator, Acting County Superintendent and Assistant County Superintendent, I have enjoyed the unique experiences from which I have reached certain conclusions which I will share with you today:

Fred Burke came to New Jersey in 1974 with a mandate for broad reform of the state's educational system. Children in New Jersey were not receiving the "thorough and efficient" education promised by the Constitution. The public, which pays the bills, knew it and demanded better quality education for its tax dollars. The courts, who were responsible for enforcing the Constitutional guarantee, knew it and ordered the state to reform the way schools were operated and funded. The Legislature, who was charged with implementing the Constitutional guarantee, knew it and, responding to the public outcry and the requirements of the courts, enacted legislation that gave the Commissioner of Education unprecedented responsibility and power to overhaul the public education system. This was the challenge and opportunity that faced Fred Burke in New Jersey.

Sadly, the tale of Fred Burke's five-year career in New Jersey is one of challenges unmet and opportunities lost. The mandate for reform has been frittered away and the children in New Jersey have received nothing in exchange except a confused

and disheartened educational bureaucracy, tens of thousands of pages of meaningless paperwork gathering dust, volumes of elevated rhetoric, and an endless stream of lame excuses.

Even the incomplete list of the failures and shortcomings of the Burke regime that follows makes discouraging reading. These circumstances must not be permitted to continue or repeat themselves:

#### SCHOOL FINANCE

1. More than anything else, New Jersey needed leadership in responding to and implementing the principle of equalization of educational opportunity ordered by the courts in Robinson v. Cahill. Fred Burke failed to provide that leadership in the crucial period between 1974 and 1976. He was silent when he should have spoken out firmly, ambiguous when he should have been clear and unwavering. As a result, New Jersey ended up with a system of school finance that weakened education in affluent communities without strengthening it in poor ones.

2. In 1976, when school districts were uncertain how much State aid they should expect, Fred Burke wavered, vacillated, and then left every district to guess for itself, thus adding immeasurably to the chaos and public trauma of the events of that year. This decision had further repercussions because it led to inequitable school budgets the following school year.

3. In implementing the "cap" law and dispensing cap waivers, he was inconsistent and arbitrary. Policies changed without notice from year to year. Decisions were made without regard to either educational justification or the policies the law was intended to carry out.

4. Fred Burke tolerated irregularities in local school district fiscal practices that led to illegal deficits, educational crises, and an educational system that is anything but "efficient." In at least two districts, Newark and Upper Freehold Regional, these irregularities led to near disaster. For example, in Newark triggering 1,100 lay offs, and subsequent community chaos.

#### URBAN EDUCATION

5. The children who suffer the most from the problems of New Jersey's educational system are the children of the cities. Fred Burke has failed to exercise leadership in the area of urban

- A situation with which I have first hand experience having served as chairperson of the Newark Task Force which was charged with reviewing the conditions of the educational process in Newark.

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education. Instead of standing unequivocally on the principle that children in urban areas can learn and should be expected to do so, and that all steps necessary to assure that they do must be taken, he has conveyed the message that these children cannot be expected to learn even basic skills and the effort to teach them is futile.

6. He has rationalized and made excuses for the failures of urban education rather than taking steps to correct it.

7. He has misrepresented to the State Board of Education and the Legislature that acute education problems identified in the Newark school system had been corrected when he knew that those problems remained (and still remain) unsolved.

8. In violation of the intent of the Legislature, he has failed to use the T&E law as an instrument to address the problems of urban school districts.

9. He maladministered compensatory education aid, in 1976-77 and 1977-78, resulting in these funds being diverted from children in urban and impoverished areas who most needed remedial and compensatory programs to children in more affluent suburban areas who had lesser need, in violation of the intent of the Legislature. He made duplicitous statements to the public and the courts in this matter in 1977, telling the public that this result was regrettable but required by an opinion of the Attorney General, and telling the courts that this result was reasonable and educationally sound.

10. He has failed to monitor the use of compensatory education aid and the implementation of remedial programs to ensure that money earmarked by the Legislature for remedial and compensatory education is not diverted to other purposes, and that remedial programs mandated by the minimum standards law are established.

#### IMPLEMENTATION OF THE T&E LAW

11. Fred Burke implemented the T&E law (The Public School Education Act of 1975, L. 1975 c. 212), which was to have been the key instrument of education reform in New Jersey, in a manner that created reams of paperwork but did not focus on the gross deficiencies that needed correction.

12. Rather than clearly and unequivocally declaring the responsibilities of local school districts under the T&E law, he issued numerous obscure and conflicting directives, which neither local school administrators nor the public could understand. Although he diverted the EIC's from the purpose of providing assistance in curriculum development and evaluation to teachers and school administrators to that of providing assistance in T&E implementation, and also employed the expanded county superinten-

dents' offices for T&E monitoring and enforcement, the bureaucracy has neither been able to clarify and explain his directives to local school officials nor provide those officials with technical assistance to enable them to comply.

13. In violation of the intent of the Legislature and of the regulations of the State Board of Education, he has repeatedly postponed and diluted monitoring, evaluation, and enforcement under the T&E law.

14. He has refused, except under acute political or public pressure, to exercise his broad statutory enforcement powers under the T&E laws in districts in which education is manifestly not succeeding.

#### TEACHER QUALITY

15. The heart of a sound educational system is a corps of high quality, well motivated teachers. Although Fred Burke has paid lip service to this principle, by his actions he has consistently hindered efforts to improve the quality of teaching in local school districts.

16. He suppressed efforts within the State Department of Education to reform teacher certification procedures to ensure that only qualified persons become teachers.

17. He opposed efforts to mandate systematic local evaluation of tenured teachers. When the State Board of Education promulgated regulations mandating local evaluation of tenured teachers, he issued guidelines that undermined those regulations.

18. He has failed to perform his statutory duty to act against excessive teacher absenteeism. Despite repeated requests, he has not even implemented a uniform reporting system for teacher absenteeism.

#### ISSUES AFFECTING WOMEN AND MINORITIES

19. Although New Jersey has adopted very progressive laws and regulations concerning equal educational opportunity for women and minorities, Fred Burke has dragged his feet in implementing those laws and regulations. The Office of Equal Educational Opportunity has remained underfunded and understaffed. He has permitted numerous school districts to ignore legal deadlines for preparation of affirmative action plans and establishment of affirmative action programs.

20. He has failed to implement meaningful affirmative action programs in the State Department of Education itself.

21. He has tolerated half-hearted implementation of laws

requiring local districts to develop programs to enable non-English speaking children to enter the educational mainstream. He has permitted bilingual education aid to be given out without regard to whether the district had programs that were approved or met legal requirements. Contrary to the intent of the Legislature, he has failed to recommend adjustments in bilingual education aid to reflect actual costs of such programs.

#### OPERATION OF STATE DEPARTMENT OF EDUCATION

22. Not only has Fred Burke failed to provide leadership on a statewide basis, he has failed to provide leadership within the Department of Education itself. He has largely abdicated responsibility for operation of the Department to the recently resigned commissioner. (see Transition Team Report).

23. By depriving the State Board of Education of input from line Department personnel, he has made it difficult for the State Board to exercise its independent judgment on important matters of educational policy as is its duty under law.

24. He has failed to take the initiative on behalf of the Department before the Legislature. He has not proposed legislation on important issues that deserve the attention of the Legislature. He has not made the resources of the Department of Education available to legislators interested in educational issues. He has limited the role of the Department of Education to one of reaction and criticism after the fact.

25. On several occasions, he has acted in excess of the authority granted him by the Legislature and the State Board of Education or in defiance of the State Board of Education.

26. He has absented himself from meetings of the State Board of Education on several occasions when controversial matters were to be decided.

27. He has used outside consultants in matters where expertise was available within the Department of Education or elsewhere in the public school system. I urge the committee to suspend judgement concerning this crucial appointment until a thorough investigation has been conducted by the appropriate authorities concerning the possible misuse of outside consultants.

In conclusion, may I humbly remind you that the only process for the review and evaluation of this extremely sensitive position rests within this committee.-----New Jersey needs fresh leadership to assure the future of its children. New Jersey is not anyone's private corporation but belongs constitutionally to the parents, students and taxpayers.



## STATEMENT OF STEPHEN EISDORFER

My name is Stephen Eisdorfer. I am acting director of the Education Law Center, a public interest law firm that represents the interests of school children and their parents in New Jersey. Today, however, I am not appearing as a representative of the Education Law Center. I am here as an individual citizen who has had the opportunity to closely observe the performance of Fred Burke as Commissioner of Education in New Jersey over the past several years and who is concerned about the fate of public education in New Jersey.

Fred Burke came to New Jersey with extraordinary opportunity to reform and improve the State's educational system. He had a uniquely powerful mandate from the courts and the legislature to make significant changes in the public schools. This opportunity had to be firmly seized. It demanded a special combination of vision, leadership, and executive ability, as well as diplomacy and an inflexible and unbending practical commitment to children throughout the state -- especially to children in urban and impoverished communities whom the New Jersey schools were demonstrably serving very poorly.

Sadly, five years later, I must conclude that Dr. Burke has not lived up to these demands. He has failed to exercise leadership when it counted. He has failed to demonstrate a real commitment to education in urban areas. He has buried the mandate for a "thorough and efficient" education for all children in opaque and in mystifying rhetoric. The children of New Jersey have suffered as a consequence.

Let me offer you some specific instances:

#### URBAN EDUCATION

-- The children who suffer the most from the problems of New Jersey's educational system are the children of the cities. Fred Burke has failed to exercise leadership in the area of urban education. Instead of standing unequivocally on the principle that children in urban areas can learn and should be expected to do so, and that all steps necessary to assure that they do must be taken, he has conveyed the message that these children cannot be expected to learn even basic skills and the effort to teach them is futile.

-- He has rationalized and made excuses for the failures of urban education rather than taking steps to correct it.

-- He has misrepresented to the State Board of Education and the Legislature that acute education problems identified in the Newark school system had been corrected when he knew that those problems remained (and still remain) resolved.

-- In violation of the intent of the Legislature, he has failed to use the T&E law as an instrument to address the problems of urban school districts.

-- He maladministered compensatory education aid in 1976-77 and 1977-78, resulting in these funds being diverted from children in urban and impoverished areas who most needed remedial and compensatory programs to children in more affluent suburban areas

who had lesser need, in violation of the intent of the Legislature. He made duplicitous statements to the public and the courts in this matter in 1977, telling the public that this result was regrettable but required by an opinion of the Attorney General, and telling the courts that this result was reasonable and educationally sound.

-- He has failed to monitor the use of compensatory education aid and the implementation of remedial programs to ensure that money earmarked by the Legislature for remedial and compensatory education is not diverted to other purposes, and that remedial programs mandated by the minimum standards law are established.

#### IMPLEMENTATION OF THE T&E LAW

-- Fred Burke implemented the T&E law (The Public School Education Act of 1975, L. 1975 c. 212), which was to have been the key instrument of education reform in New Jersey, in a manner that created reams of paperwork but did not focus on the gross deficiencies that needed correction.

-- Rather than clearly and unequivocally declaring the responsibilities of local school districts under the T&E law, he issued numerous obscure and conflicting directives, which neither local school administrators nor the public could understand. Although he diverted the EIC's from the purpose of providing assistance in curriculum development and evaluation to teachers and school administrators to that of providing assistance in T&E

implementation, and also employed the expanded county superintendents' offices for T&E monitoring and enforcement, the bureaucracy has neither been able to clarify and explain his directives to local school officials nor provide those officials with technical assistance to enable them to comply.

-- In violation of the intent of the Legislature and of the regulations of the State Board of Education, he has repeatedly postponed and diluted monitoring, evaluation, and enforcement under the T&E law.

-- He has refused, except under acute political or public pressure, to exercise his broad statutory enforcement powers under the T&E laws in districts in which education is manifestly not succeeding.

Each of these instances represents a sound justification for the Seante's refusing to approve the renomination of Fred Burke. I urge you to give these instances your most careful scrutiny and deliberation. I urge you to cast your votes for a better, fairer, and more effective educational system. I urge you not to approve the renomination of Fred Burke as Commissioner of Education.



GENERAL ASSEMBLY  
OF NEW JERSEY  
TRENTON

DEPUTY MINORITY WHIP  
MARIE SHEEHAN MUHLER  
ASSEMBLYWOMAN DISTRICT II (MONMOUTH)  
2 EAST MAIN STREET  
P. O. Box 838  
FREEHOLD, N. J. 07728  
BUS. 201-462-9009

TO: Senate Judiciary Committee Members

SUBJECT: Reappointment of Fred G. Burke as Commissioner  
of Education

Dear Senators:

As a member of the Assembly Education Committee and the Joint Committee on Public Schools I am urging you to vote "NO" on the reappointment of Fred G. Burke as Commissioner of Education.

Mr. Burke's five year tenure has been littered with indecision, mis-direction and arbitrary incompetence. The Commissioner has lost the confidence of the people of New Jersey and his reappointment would be a mistake. He has embroiled himself in controversy after controversy and instead of being the champion of the educational process he has politicized his office and has tilted to the special interest groups. Unfortunately the public school children of the state have not been his special interest.

His acquiescence to illegal overspending by Newark's Board of Education, his abandonment of the "T & E" process, his refusal to consider caps relief requests from districts above the 65th percentile in spending and his silence about the proposed 22 million cut in state aid to schools, his announcement to do away with the

position of County Superintendent (from which he backed down), his statement that pupil progress should be included in teaching evaluations (from which he backed down) are among the reasons for Mr. Burke's loss of credibility.

Mr. Burke apparently consciously misled the State's Attorney General and the public regarding the conflict position of Robert Worthington, a member of the State Advisory Council on Vocational Education. The public deserves an explanation as to why he said Worthington's firm, Career Development Associates, Inc., did receive several contracts. If Mr. Burke did not know of the contracts, why didn't he?

All these controversies have destroyed his effectiveness as Commissioner at a time when public education in the state is on the bottom rung of the ladder.

The State's Education hierarchy needs new direction, new vision and lots less controversy in order to rekindle public confidence in the public schools.

A new commissioner, untainted by the turmoil under Mr. Burke's leadership is desperately needed in our State. You have a tremendous responsibility to see to it that the children, the parents and the taxpayers of the State of New Jersey have an Educational Leader second to none. The lukewarm support of Mr. Burke's reappointment should prove to anyone that he has not earned your endorsement for another five years.





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Cat. No. 23-221

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