
Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"Testimony regarding the Race to the Top education funding application process"

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: October 7, 2010
9:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Barbara A. Buono, Chair
Senator M. Teresa Ruiz, Vice Chair
Senator Sandra B. Cunningham
Senator Paul A. Sarlo
Senator Thomas H. Kean



ALSO PRESENT:

Matthew T. Szudajski
Luke E. Wolff
Office of Legislative Services
Committee Aides

Timothy Lydon
Jason Redd
Senate Majority
Committee Aides

Frank Dominquez
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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SENATOR BARBARA BUONO (Chair): Good morning. I'm Senator Buono, the Chair of the Senate Legislative Oversight Committee.

We are here today to discuss the circumstances surrounding the application for Race to the Top funding. It was described in detail in the subpoena -- the resolution that supports the subpoena which is demanding the production of documents and the appearance of certain witnesses here today.

I just wanted to begin -- before we welcome and swear in the first witness -- that the contractor for the State of New Jersey who was hired to help draft, edit, and prepare the Race to the Top application was in court this morning before Judge Feinberg, with the Attorney General's office, attempting to raise certain privileges -- executive privilege, other privileges as well -- that would have resulted in Wireless not appearing and producing documents before the Committee. Judge Feinberg dismissed their motion to quash the subpoenas, citing that she had no jurisdiction. This is the legislative subpoena and, as we all know, the Legislature has the inherent power to investigate. There is certainly no-- Privileges may be raised at the hearing, and then it's up to the discretion of the Committee how to handle it and whether it's admissible. There certainly is no discomfort privilege, though. And so with that, I'm going to begin by assuming they will be here later in the day. But we are going to begin by welcoming--

SENATOR KEAN: If I may, Madam Chair. May I make a point of order, please?

It is my understanding that this morning's hearings, like last night where the Attorney General's Office stated that they understand,

from Mr. Lydon, that currently there are no mechanisms in place to ensure the preservation of these privileges during the Committee's hearing--

SENATOR BUONO: No, there are mechanisms in place. There are mechanisms.

SENATOR KEAN: And Judge Feinberg, just this morning, Madam Chair, stated that we should delay this effort to such time that there are, in place, certain processes to protect these types of privileges and not determine them on the fly. Unfortunately--

SENATOR BUONO: It's not on the fly. There are mechanisms in place, they're in statute that the Legislature -- that it is the prerogative of the Legislature, in our investigatory power, to hear the witness. If the witness raises a privilege, then there are mechanisms in place to determine whether or not we should hear the testimony or view the documents.

SENATOR KEAN: Madam Chair, there are a number of issues that--

SENATOR BUONO: But let me say this, let me say this, Senator Kean: With respect to the first witness, Bret Schundler, if there is any privilege that's being asserted with respect to executive privilege or deliberative process -- whatever it may be -- it certainly has been waived. His testimony has been distributed to the press, it's on line, it's been in the press for weeks. There's additional testimony -- that he added a bit to the chronology of events that he provided weeks ago. And it's in the public domain, it's in the press. The Governor has publicly stated that he's been totally forthcoming. So unless there's something the Governor's trying to hide beyond what we already know-- I mean, I think everything--

SENATOR KEAN: You have stated on the record on the floor that you don't believe that any -- and you're restating in here -- that you do not believe that there's any privilege that appears-- That the privilege has been pierced already by statements in the newspaper.

SENATOR BUONO: No, no, no. We're not going to get--

SENATOR KEAN: Likewise, executive privilege is something that's waived by--

SENATOR BUONO: Senator Kean, let's not start off on the wrong foot here. I'm going to conduct this hearing. It's going to be conducted in a very rational, orderly way. And please do not interfere with the Legislature conducting the hearing, because I will conduct this hearing, regardless. And I don't want to get into a debate about what I said or what I didn't say on the floor of the Senate. It's not relevant, and I'm not going to entertain it.

SENATOR KEAN: Madam Chair, these subpoenas bring very serious consequences associated with them.

SENATOR BUONO: I'm well aware of that.

SENATOR KEAN: Not only on the issue of privileges -- which is not, with all due respect, served by Commissioner Schundler, but would be issued by the Executive Branch, currently, which is not before us here today -- number one. Secondly, the issue is these subpoenas hold penalties that are significant. If we may have read for the record: What are the consequences of these subpoenas? What could possibly--

SENATOR BUONO: I think it's preliminary-- The fact is the subpoenas have been issued, and it's very simple. The witness has to appear; the witness has to testify; the witness has to produce documents.

This is the Legislature. We have our rules and people have to adhere to them.

I mean, no one is above the law. No one is above coming and answering questions before the Legislature. And so I think that trying to-- Whatever it is, Senator Kean, that you're trying to do -- you may have the best intentions, and I'm sure you do -- but the end result will be subverting and undermining our system of checks and balances. The Legislature is an independent branch of government, and the Governor has already undermined the independence of the Judiciary. I will not allow him -- I will not sit and watch him do it to this branch of government.

SENATOR KEAN: Madam Chair, with all due respect--

SENATOR BUONO: A subpoena has been issued. I'm going to rule you out of order soon, so--

SENATOR KEAN: With all due respect, Madam Chair: Number one -- both the judge this morning and the Attorney General last night said there is no process in place to determine privilege. So the question I have for you, Madam Chair, is what is the process to determine privilege?

SENATOR BUONO: When we get--

SENATOR KEAN: Starting out, what is the process to determine privilege?

SENATOR BUONO: Senator Kean, we are going to begin with this witness. If a privilege is raised by the witness, we'll get to that point.

SENATOR KEAN: Privilege--

SENATOR BUONO: And as I said, I'm sure that you have read the statute, and if you didn't do your homework, then you should have. You have staff there, they can tell you-- They can tell you--

SENATOR KEAN: What is the process, Madam Chair, by which you would have determined what is privilege and what is not? It's a very basic question.

SENATOR BUONO: When we come to that, the Committee will vote. If it's testimonial, the Committee will vote. Based upon what the witness -- if the witness raises it. But it's premature.

SENATOR KEAN: Then if I may, I make a motion, Madam Chair.

If I may--

SENATOR BUONO: I am going to call-- Can you call the roll?

MR. SZUDAJSKI: Senator Kean.

SENATOR KEAN: Here.

MR. SZUDAJSKI: Senator Kyrillos. (no response)

MR. SZUDAJSKI: Senator Buono.

SENATOR BUONO: Present.

MR. SZUDAJSKI: Senator Sarlo.

SENATOR SARLO: Present.

MR. SZUDAJSKI: Senator Ruiz.

SENATOR RUIZ: Here.

MR. SZUDAJSKI: Senator Cunningham.

SENATOR CUNNINGHAM: Here.

SENATOR KEAN: If I may, Madam Chair, I'd like to make a motion.

SENATOR BUONO: I'd like to swear the witness in.

SENATOR KEAN: Madam Chair, I'd like to make a motion to seat another member.

SENATOR BUONO: If the witness is--

SENATOR KEAN: If this is, indeed, going to be a fair and constitutional hearing--

SENATOR BUONO: You're interfering with the hearing. Let us proceed according to the rules.

SENATOR KEAN: Well, I'd like to make a motion, Madam Chair--

SENATOR SARLO: I make a motion--

SENATOR KEAN: --to seat an additional member, Senator Kevin O'Toole.

SENATOR BUONO: I've already--

SENATOR SARLO: Motion to table.

SENATOR RUIZ: I second that motion.

SENATOR KEAN: Which--

SENATOR RUIZ: Your motion, Senator Kean.

SENATOR BUONO: No, I'm already trying to swear in the witness.

Senator, Senator--

SENATOR RUIZ: But there is a motion on the table.

SENATOR KEAN: There's a standing motion on the floor that's been seconded by members of the Committee--

SENATOR BUONO: No there isn't.

SENATOR KEAN: --to seat a second -- a full complement of this Committee. If we are, indeed, going to have a hearing that is balanced and brings up all issues of pertinence, we identified a week ago that Senator Kyrillos was going to be on his 15th wedding anniversary, on a trip with his wife. We had documentation back and forth between the Majority and the Minority party, saying that there would be no problem seating Senator O'Toole, days ago. This morning, on the way down to Trenton, we were told-- In fact, I wasn't told, my staff was told -- that that would not be allowed.

SENATOR BUONO: So make your motion, make your motion, make your motion.

SENATOR KEAN: I'm making a motion to allow a second Republican, Senator O'Toole, to sit to be part of these proceedings.

SENATOR RUIZ: And I second that motion.

SENATOR BUONO: Call the roll.

MR. SZUDAJSKI: Senator Kean.

SENATOR KEAN: Yes.

SENATOR SARLO: Can I motion to table that?

SENATOR BUONO: Yes, I thought you did, actually, before Senator--

SENATOR SARLO: Yes, I did. I made a motion to table.

SENATOR BUONO: --before Senator Ruiz made her second.

SENATOR SARLO: Yes, a motion to table.

SENATOR RUIZ: No, I actually seconded the motion before you (indiscernible) to table.

SENATOR SARLO: No, I made a motion--

SENATOR BUONO: No.

SENATOR RUIZ: Let's not get into semantics here.

He made a motion and I seconded it.

SENATOR BUONO: Go ahead. The motion has been made by Senator Sarlo to table.

Roll call.

MR. SZUDAJSKI: Senator Kean.

SENATOR KEAN: I oppose.

SENATOR BUONO: No -- you oppose. No for Senator Kean.

MR. SZUDAJSKI: Senator Kyrillos. (no response)

MR. SZUDAJSKI: Senator Buono.

SENATOR BUONO: Yes.

MR. SZUDAJSKI: Senator Sarlo.

SENATOR SARLO: Yes.

MR. SZUDAJSKI: Senator Ruiz.

SENATOR RUIZ: No.

MR. SZUDAJSKI: Senator Cunningham.

SENATOR CUNNINGHAM: No.

SENATOR BUONO: The motion carries.

SENATOR KEAN: No, Madam Chair, the motion to table fails. So now we will have--

SENATOR SARLO: No, the motion doesn't carry.

SENATOR KEAN: The motion to table fails. So now--

SENATOR BUONO: You're right, you're right. The motion to table fails.

SENATOR KEAN: So we'll then have a roll call vote to seat -- on a motion to seat Senator O'Toole.

SENATOR BUONO: Now we're going to-- I don't you need you tell me the procedure.

Now we need a motion on Senator Kean's motion.

SENATOR SARLO: I'm sorry -- what is this motion on?

SENATOR KEAN: To allow Senator O'Toole to join this Committee for purposes of this hearing.

SENATOR RUIZ: And I'll second the motion again.

SENATOR SARLO: Well, what are the rules-- Can I ask what the rules-- This is not a standing Committee.

SENATOR BUONO: Well, the rules are--

SENATOR SARLO: Why are we entertaining motions on--

SENATOR KEAN: It is a standing committee.

SENATOR BUONO: It is not a standing reference committee.

SENATOR SARLO: It's not a standing reference committee.

SENATOR BUONO: It is not.

SENATOR KEAN: It's a standing administrative committee, sir.

SENATOR BUONO: The process is, according to the Senate rules, that you seek the--

SENATOR SARLO: I'd like to hear what the Senate rules are before we have all these motions.

SENATOR BUONO: Right.

SENATOR SARLO: Before I'm going to vote on something, I want to know what the Senate rules are. Because-- Can we get a copy of the Senate rules?

Thank you.

SENATOR BUONO: Alright, we'll recess for a moment.

(RECESS)

AFTER RECESS:

SENATOR BUONO: Okay, everyone. (raps gavel)

The Committee has reconvened from recess.

I was asked by Senator Kean to cite the rule that gives the Senate President the exclusive authority to substitute members on the Committee.

I have the rule -- it's 3:6, and so your motion is out of order.

I'm going to swear in the witness.

SENATOR KEAN: I'd like to appeal the ruling, Chair.

SENATOR BUONO: No, enough, enough. (raps gavel)

Let's proceed.

SENATOR KEAN: Madam Chair, it's a legitimate motion.

SENATOR BUONO: No, the motion is out of order. The motion is out of order. What don't you understand about that?

SENATOR KEAN: And I'm appealing the ruling of the Chair.

SENATOR BUONO: And I'm denying it.

SENATOR KEAN: May I ask for a roll call vote?

SENATOR BUONO: The Committee calls Bret Schundler to testify.

SENATOR KEAN: It's a non-debatable request. I'm asking for a roll call vote, Madam Chair.

SENATOR BUONO: What is your motion now, Senator Kean?

SENATOR KEAN: I'm appealing the rule of the Chair.

SENATOR SARLO: Table his motion.

SENATOR RUIZ: I'll second it.

SENATOR BUONO: It's not the rule of the Chair. It's the rules of the Senate we are reinforcing.

It's not the rule of the Chair.

SENATOR SARLO: You can't -- Senator Kean.

SENATOR BUONO: You can't appeal the rules of the Senate.

SENATOR KEAN: You just said you were ruling me, so therefore I'm appealing the rule of the Chair.

SENATOR BUONO: Senator Kean's out of order.

Senator Kean, stop making this something that we're not going to be proud of. Let's move forward. I think we're all better than this.

SENATOR KEAN: If I may, Madam Chair, that's a personal conversation.

SENATOR BUONO: The Committee calls Bret Schundler.

SENATOR KEAN: Madam Chair, if I may, for the record.

SENATOR BUONO: I'm going to ask you to be removed from the room--

SENATOR SARLO: Excuse me--

SENATOR BUONO: --if you continue to disrupt this hearing.

SENATOR SARLO: Senator Kean, may I--
Madam Chair?

SENATOR BUONO: Yes.

SENATOR SARLO: Senator Kean, please. You're making a mockery of this proceeding now; you really are. The rules are the rules -- it's as simple as that. We honored your motions. The rules are the rules. We just read them, it's simple. We have attorneys in the room who could read the rules.

SENATOR KEAN: If the--

SENATOR SARLO: Please, we cannot-- You're making a mockery of this situation.

SENATOR KEAN: With all due respect, Senator--

SENATOR BUONO: With all due respect

SENATOR KEAN: And all due respect to the Chair, first and foremost the majority of the Committee voted to allow a second Republican Senator to join us for these hearings. That's the first issue.

SENATOR BUONO: I said the Senate rules take precedence. And you know that.

SENATOR KEAN: Fundamental fairness--

SENATOR BUONO: The motion was not appropriate.

SENATOR KEAN: Fundamental-- It would--

SENATOR BUONO: And I am going to proceed with the swearing in of the first witness.

The Committee calls Bret Schundler to testify. I see he is already seated.

Mr. Schundler, thank you for appearing today. I'm Senator Buono, Chair of the Committee. Are you accompanied by an attorney today? No -- okay.

BRET D. SCHUNDLER: No, I'm not.

SENATOR BUONO: Before I swear you in, I just wanted to say, just from one human being to another: I know that there's a lot of theater surrounding the proceedings today, and I apologize to you for that. Because this is a very serious matter, and I can assure the members of the audience, the members of the Committee, and the members of the public that it will be conducted in such a way as to arrive at the truth, and to conduct the Legislature's constitutionally and statutorily vested authority to have some oversight into what occurred with the Race to the Top.

Now, from one human to another, I want to tell you I'm sorry that you have to go through this. And with all the theater, it may detract from how serious this is and how difficult it is for you to appear here. And I want you to know that we don't lose sight of that.

Mr. Schundler, do you understand that if the statements you make today are willingly false, if you fail to answer a pertinent question, or commit perjury you may be subject to penalties under the law?

MR. SCHUNDLER: Yes.

SENATOR BUONO: Did you receive a subpoena from this Committee compelling your testimony at this meeting?

MR. SCHUNDLER: Yes.

SENATOR BUONO: And the production of certain records?

MR. SCHUNDLER: Yes.

SENATOR BUONO: Did you receive a copy of the Code of Fair Procedure, together with the subpoena?

MR. SCHUNDLER: I received -- let me see if that's what it was--

SENATOR BUONO: You should have. I signed the subpoena, and it was attached to it.

MR. SCHUNDLER: Yes -- a Code of Fair Procedure -- yes.

SENATOR BUONO: Do you understand that you have certain rights under the Code of Fair Procedure, including the right to be accompanied by counsel, who shall be permitted to confer with you during your questioning, advise you of your rights, and submit proposed questions on your behalf?

MR. SCHUNDLER: Yes.

SENATOR BUONO: As you can see, Mr. Schundler, we have a hearing reporter from the Office of Legislative Services' Hearing Unit present. Your testimony is being recorded, and it may be transcribed for the Committee and it may be used in other proceedings. Do you understand that?

MR. SCHUNDLER: Yes.

SENATOR BUONO: You're entitled to a copy of the transcript of your testimony, at your expense, when such copy is available. Do you understand that?

MR. SCHUNDLER: Yes.

SENATOR BUONO: You have the right to file a brief sworn statement relative to your testimony, for the record, at the conclusion of your examination. Do you understand that?

MR. SCHUNDLER: Yes.

SENATOR BUONO: Please note that all of your responses should be verbal. We cannot record a headshake or a nod. If you do not understand a question, please ask for clarification. Otherwise I am going to assume that you understand the question, and that your answers are responsive to that question. Do you understand those directions?

MR. SCHUNDLER: Yes.

SENATOR BUONO: Before I proceed with the oath, do you have any questions?

MR. SCHUNDLER: The one question I do have concerns the e-mails and so forth that the Committee has subpoenaed. I have been advised by the Attorney General's Office that that information is privileged. So while I'm very happy to answer questions verbally and so forth in response to the subpoena, I don't know what I should be doing relative to e-mails and so forth -- whether the-- If you will, whether the Executive Branch does have privilege in that area, or whether that information is subpoenaable. They're saying no, you are saying it is subpoenaable, and that puts me, obviously, in a hard place.

SENATOR BUONO: Which is what just happened in court today -- similar situation with Wireless Generation. The Attorney General tried to have Wireless Generation assert the Attorney General's privilege, and the judge ruled against it. So you are a witness-- Either you or your attorney has standing to raise that as a privilege -- no one else can raise it through you as a proxy.

SENATOR KEAN: If I may, Madam Chair.

SENATOR BUONO: We're going to swear him in, and then we can get to that.

SENATOR KEAN: Well, I want to make sure he understands what you just said.

SENATOR BUONO: Do you understand what I just said, Mr. Schundler?

MR. SCHUNDLER: Yes, I guess--

SENATOR BUONO: Alright, yes?

SENATOR KEAN: He was--

SENATOR BUONO: He's answered-- Can you turn off your mike, please?

Go ahead.

MR. SCHUNDLER: Well, I guess with regard to the e-mails and so forth: Until I'm able to get clarification, if you will, about whether that is privileged information or not, while I don't care personally, I do respect the fact that there are large issues involved here with regard to: in the future, whether governors will feel that they can talk about things in e-mail, or whether the Executive Branch feels that they can communicate between the Governor's Office and agencies without having all of that become public. So I think I would like to not provide all that e-mail information until this question is ultimately resolved, if you will.

SENATOR BUONO: And I should advise you that anything that has already been released and is in the public domain would not--

MR. SCHUNDLER: Right.

SENATOR BUONO: So you are aware of that?

MR. SCHUNDLER: Yes, and I have the--

SENATOR KEAN: Madam Chair, the--

SENATOR BUONO: We will take that under advisement, Mr. Schundler, with respect to the e-mails, the documents that I think you said you put on a disk.

MR. SCHUNDLER: Right. There's a very large amount; it was a very broad subpoena--

SENATOR BUONO: Yes, it was.

MR. SCHUNDLER: --in effect asking for all documents relating to Race to the Top. So I understand that that issue is bigger than the Race to the Top application, then--

SENATOR BUONO: Sure, okay. Please stand and raise your right hand.

SENATOR KEAN: Madam Chair, if I may before he-- Madam Chair, with all due respect--

SENATOR BUONO: I think I answered his questions to his satisfaction. We're taking it under advisement, Senator Kean.

SENATOR KEAN: The Former Commissioner is in the position of not fully understanding. And the court this morning said there should be a process by which we can determine, as opposed to on the fly, what executive privilege is.

SENATOR BUONO: We are not--

SENATOR KEAN: We need to figure out first if--

SENATOR BUONO: You're talking about a different witness.

SENATOR KEAN: No, no, the--

SENATOR BUONO: You're talking about the Assistant Commissioner now?

SENATOR KEAN: What the judge said this morning was there should be a procedure that's established--

SENATOR BUONO: And there will be a procedure. We're taking it under advisement. But Mr. Schundler is here--

SENATOR KEAN: That's not--

SENATOR BUONO: Mr. Schundler is here to testify, and testify he will--

SENATOR KEAN: And the issue between--

SENATOR BUONO: --whether you want him to or not.

SENATOR KEAN: First of all, the issue of waiving of executive privilege is not his to waive, but it is the Executive Branch's.

SENATOR BUONO: Exactly.

SENATOR KEAN: Secondly, he is about to swear under oath before this Committee and there are extraordinarily serious issues -- not only on the separation of powers issue here that are being discussed, but also for his own personal -- and any subsequent witnesses -- personal recognizance. They can state whether they-- I mean, they can be jailed on perjury, or if he doesn't, where the line is--

SENATOR BUONO: Senator Kean, I think I take-- You don't need to re-explain what I already did to the witness. He understands that there are penalties if he fails to testify truthfully.

SENATOR KEAN: He says that there's a vary between Executive privilege and--

SENATOR BUONO: And with that we are going to--

SENATOR KEAN: --your interpretation of what's allowed and the Attorney General's about what is allowed.

And you have said in the past, and here today, that you had determined that on the fly.

SENATOR BUONO: I never said that, and we're going to proceed.

SENATOR KEAN: Well, then, if I may have a full complement of this Committee so we can have a substantive vote to determine these going forward.

SENATOR BUONO: We are going to proceed with swearing in the witness.

Please stand and raise your right hand, Mr. Schundler.

I, Bret Schundler--

MR. SCHUNDLER: I, Bret Schundler--

SENATOR BUONO: Do swear or affirm--

MR. SCHUNDLER: Do swear or affirm--

SENATOR BUONO: That the testimony you are about to give is true, correct, and complete--

MR. SCHUNDLER: That the testimony I am about to give is true, correct, and complete--

SENATOR BUONO: To the best of your information, knowledge, and belief.

MR. SCHUNDLER: To the best of my information, knowledge, and belief.

SENATOR BUONO: Please be seated, and state your name for the record.

MR. SCHUNDLER: My name is Bret Schundler.

SENATOR BUONO: Were you previously employed by the Department of Education, and in what capacity?

MR. SCHUNDLER: Yes, I was the Commissioner of Education.

SENATOR BUONO: Between what dates were you Commissioner? How long did you hold the position?

MR. SCHUNDLER: I believe the Governor was sworn in on January 19 -- I think that's correct -- and I was-- I began in that capacity as an Acting Commissioner, until I was confirmed by the Senate. And my tenure extended until the 27th of August -- or 28th of August, I guess.

SENATOR BUONO: Now, you submitted a chronology of events some time ago and, as a result of my interviewing you, you decided to expand upon it. And all those have been submitted -- that altered, amended statement, I should say, has been provided to all the members of the Committee, as well as the press. So I'm not going to go through the entire statement because it has been in the public domain for quite a while. However, I would like to begin on page 2 with the issues that were brought up in -- beginning in paragraph 3.

Now, there's been a lot of talk, so far, about the loss of funds due to the incorrect information provided to the U.S. Department of Education in subsection F, but it's become apparent that there were a number of reasons we lost points which contributed to failing to win \$400 million in Federal Race to the Top dollars.

SENATOR KEAN: If I may, Madam Chair.

SENATOR BUONO: Oh, my God. I mean, enough.

SENATOR KEAN: The Minority hasn't received the statement.

SENATOR BUONO: I mean, you can't--

SENATOR KEAN: I'm just saying the statement and the amended statement was never distributed to the Minority party.

SENATOR BUONO: Well, it's been online since about 5 a.m. this morning, in the press.

SENATOR KEAN: The statement and the amended statement?

SENATOR BUONO: All right, you know what? That's a very good idea.

Mr. Schundler, I hate to impose upon you. Would you mind reading the statement? Thank you.

MR. SCHUNDLER: The entirety of the testimony, or just this section?

SENATOR BUONO: The entire statement, for Senator Kean. I know that there's some issues further on that you changed as well -- just minor issues. But if you would, I would appreciate it.

Thank you.

MR. SCHUNDLER: Okay.

You have asked me to provide written testimony addressing matters that were largely covered by the *Chronology of Events* I released some weeks ago. Where you have raised questions that were not covered -- for instance, relating to the Race to the Top agreement that I worked out with the New Jersey Education Association -- I have expanded this *Chronology of*

Events to be responsive. For the most part, however, what I say here is simply what I have said on these matters many times before.

On Wednesday, August 25th, while criticizing the Obama Administration during a press conference, the Governor made a statement in support of an argument he was trying to drive home. The statement was untrue. I had stressed this point to the Governor when he had told me what he planned to say, right before the press conference began. I had also discussed the matter at length with his Chief of Staff and his Director of Communications the day before, so they knew the facts of the matter.

On the very next day the Obama Administration released a video tape that proved the Governor's statement was untrue. Governor Christie was embarrassed. Rather than acknowledge his culpability for the false statement, he fired me, his Commissioner of Education, charging that I had given him and his staff bad information on the point in question. But I had not. I had given them correct information. The Governor's charge against me is false.

I accept the Governor's right to fire Commissioners with or without cause, and I have subsequently learned that I made an editing error which contributed to New Jersey not winning a \$400 million grant. I could accept being fired for that, but I will not accept being defamed by the Governor, which I was on Tuesday, August 31, when the Governor insinuated that I had lied to him. That was totally unacceptable. The Governor left me no choice but to defend my name through making public this chronology of events and the attached evidence.

The first fact of note is that we submitted a strong application to the Federal government in connection with the United States

Department of Education's Race to the Top grant competition and almost overcame steep odds against us. With hundreds of millions of dollars at stake, states were competing aggressively, and to beat the favorites, New Jersey needed to overcome disadvantages in three areas that accounted for a lot of competition points. One: its lack of union support for proposed reforms; two: the fact that so much of its reform agenda was in the proposal stage, not already enacted; and three: its inferior education data-tracking capabilities.

The Corzine Administration had put money into developing New Jersey's education data tracking ability, but other states, which had received large Federal grants to assist their efforts during the past four years, were way ahead. There is nothing Governor Christie and I could have done in the four-and-a-half months since his inauguration to compensate for that fact.

Governor Corzine had also allowed New Jersey to fall behind the front-running states when it comes to education reforms already implemented. With these two factors and a lack of union support working against us, we were ecstatic when the grant readers -- who loved our vision and proposals for education reform -- accepted New Jersey as one of 19 finalist states.

We subsequently learned that we entered the finals with the lowest ranking of the 19 finalists. The New Jersey Education Association asserts that Governor Christie is responsible for that weak starting position. It argues that if Governor Christie had accepted the compromises it worked out with me, New Jersey's grant application would have won union support, causing us to finish in 4th place, and to win \$400 million for our schools.

Governor Christie responds that the reforms I put on the table were precisely those being called for by the Obama Administration, as well as education reformers across the political spectrum, and that the NJEA should have supported the entire package, as originally proposed by me, without us having to compromise.

My view on this is that the compromises I made to secure the NJEA's support were inconsequential, and that the Governor made a bad decision when he vetoed our agreement. That decision probably cost New Jersey a minimum of fourteen points in the grant competition, and the Governor made it knowing every point would count.

My agreement with the union was achieved on Thursday, June 27. I was extremely happy with it. The union gave us almost everything we wanted and I was convinced their support gave us a winning application. Since I had kept the Governor's Chief of Staff abreast of my discussions with union, it surprised me when the Governor called me the next morning and loudly expressed his unhappiness with the agreement.

The Governor informed me that New Jersey 101.5 radio host Jim Gearhart was saying he had caved in to the union. He said that the leaders of the NJEA had demeaned him and that it was utterly intolerable for him to be viewed as having given-in to them. The money was not worth it.

I think the Governor was counterproductively cavalier about the money: the Department of Education's share of funds – independent of the yet greater amount of funds that would have gone to schools districts -- would have been three times the Department's annual operating budget.

When you insulate your home, you pay upfront, but it then saves you money year after year. In like manner, we planned to use the DOE's Race to the Top funds to cover one-time state expenses that would produce considerable savings for the State and its school districts year after year, even while accelerating the reformation of our public education system and increasing student learning all throughout New Jersey.

That said, with the Governor emphatic that the money didn't matter to him, I offered two other arguments to consider: first, that the compromises I'd approved were inconsequential; and second, that gaining the NJEA's endorsement, beyond bringing New Jersey \$400 million, would make it possible to implement 90% of our reform agenda immediately. We could then fight for the remaining 10%, instead of having to fight the NJEA, tooth and nail, for every reform we wanted to implement.

There were three compromises I had approved: First, I accepted some superficial word changes that were meaningless in their effect. The NJEA had demonized the concept of *merit pay* and didn't want to ask its locals to endorse an application that included those words. I happily agreed to take the words *merit pay* out of the document and to substitute the word *bonus*. The NJEA also wanted the *bonus* provisions in New Jersey's application to be spoken of as a *pilot program*. That, too, was window-dressing: Every school district in New Jersey that received Race to the Top funds would still be required to implement the application's bonus provisions. In my opinion, increasing the educational opportunities of 1.4 million New Jersey school children was worth making these word changes for the NJEA.

The second compromise I agreed to was also minor. In my original Race to the Top plan, I proposed having the State's Department of Education send state-funded merit pay dollars to the particular teachers or teacher teams directly responsible for helping underperforming students significantly accelerate their learning. I also proposed to have state-funded dollars go to their schools as a whole. Up to 50 percent of the money would go to the teachers or teacher teams directly responsible, and a minimum of 50 percent would go to their schools as a whole. The NJEA, the New Jersey Principals and Supervisors Association, and the New Jersey Association of School Administrators all wanted 100 percent of the bonus money to go to the teachers' schools as a whole. They argued that school-wide merit bonuses have been tried and shown to work, but that merit pay for individual teachers has not been tried and there is no good data on whether it will produce positive effects. I refused to have 100 percent of the money go to schools, but I agreed to allow schools to explore different arrangements when it comes to distributing the bonuses for individual teachers and teacher teams. We wouldn't have the State take a one-size-fits-all approach. We would allow schools to choose from an extensive menu of possible arrangements, and then collect data on what works best.

The third compromise I agreed to had to do with New Jersey's reductions-in-force statutes. Presently, when a school district implements layoffs, teachers are laid off by seniority: last in, first out. My original Race to the Top proposal would have changed that: teachers evaluated as being ineffective would be laid off before teachers evaluated as being effective, who would be laid off before teachers evaluated as highly effective, who would be laid off before Master Teachers. Seniority would only be used

within each effectiveness category. The teachers union was dead set against this change. It was a make-or-break issue for them. To get the union's endorsement for New Jersey's Race to the Top application, I agreed to drop this proposal from the application.

Layoffs don't happen that often in public education. And once New Jersey implements its other Race to the Top reforms, school districts will be able to dismiss ineffective teachers as a matter of course, whether layoffs are pending or not. That said, what really made this third compromise appealing is the fact that dropping the proposed change from our application did not mean we had to drop it from our legislative agenda. The NJEA and I had simply agreed to disagree on the RIF issue. They were willing to endorse a grant application that did not include the proposal, but I made no commitment that Governor Christie and I would drop it from our legislative agenda.

Had the Governor not vetoed our agreement, we would have had the NJEA's endorsement for our application, would have won \$400 million in Federal grant funds, could have put our Race to the Top reforms before the Legislature with the NJEA's endorsement, would have been able to quickly pass this package of reforms (representing 90 percent of the Governor's education reform agenda), and we would still have been able to fight on the floor of the Legislature to pass reforms that the union was unwilling to endorse.

This third compromise is the only one I agreed to prior to informing the Governor's Chief of Staff. I told him about it immediately following the agreement, and when I explained my rationale for the compromise, he was okay with it. But as I mentioned earlier, less than 24

hours later, the Governor informed me that he was not okay with it. It was a minor compromise, but in retrospect, I wish I had cleared it with Governor Christie in advance. I think he would likely have approved it.

As I mentioned earlier, I believe the Governor's scrapping of my agreement with the NJEA was a bad decision. It cost us a lot of points. It was demoralizing for us at the Department of education. But as my DOE team and I prepared to meet with grant reviewers in Washington this past summer, it was water under the bridge.

We set our sights on doing our best and practiced what to say to the grant reviewers. I decided to directly address New Jersey's three weaknesses through reinforcing the arguments we had made in our written application. And my team and I also practiced what not to say. The rules governing the grant competition were explicit: You were not to present new information during the interview. You were only to reinforce points already made in the paper application submitted on the due date.

During the interview, my team and I made our points well. New Jersey's score increased by 34 points after the interview. That's a bigger increase than any other state received, not only in this June round of the competition, but also in the January round. Indeed, this point gain was almost seven times as great as the points we lost through my editing error. If we hadn't done such a good job, no one would have cared about my editing error because the small number of points we lost would not have mattered. It is somewhat ironic, therefore, that my error did matter.

Midway through the one-hour question and answer period, a question was asked that caught us off guard. A reviewer asked, "We were unable to find in the application the funding levels" -- school education

funding levels, specifically -- “for the years 2008 and 2009 as requested in the application. Can you explain how or where this information was presented in the application?” My teammates and I were taken aback. How could the information not be there? We began searching for the information to see if the application page with it was out of order. The reviewer said, “We can come back to that if someone can take a look.” I said, “That would be helpful,” and as two of my team members continued the search, the reviewers moved on to other questions.

At the end of the question-and-answer period, a reviewer asked, “And did you have any luck with the financial data?” One of my Assistant Commissioners responded, “No,” and a moment later added, “We all searched.”

I have recalled one of the reviewers saying something like, “I hope you feel we gave you a fair opportunity to find the page with the information,” and me responding that they did, and adding that we did meet the education spending criterion for grant points. But that exchange is not on the videotape of the one-hour Q & A. It’s clear to me now that it must have happened three minutes later when, the hour over, we and the reviewers stood up, shook hands, and exchanged niceties.

At the Assembly Appropriations hearing that was recently held on our Race to the Top application, one of my New Jersey teammates, Dan Gohl, testified that he overheard a snippet of a conversation I had with the lead reviewer during this post-interview period. Specifically, Dan remembers me saying, “We can get you anything you want.” Put our recollections together, and you have me saying, in essence: “Yes, you did give us a fair opportunity. By the way, we do meet the criteria for points on

that question. We can get you anything you want in the way of evidence.” It all fits perfectly -- Dan’s recollection supports my own recollection relating to this conversation. My team and I walked out of that interview feeling good about our presentation. We knew the odds were against us, but we thought we still had a chance.

When the final results were announced, however, we were crestfallen: New Jersey had missed winning by just three points. After we poured over the Fed’s scoring break-down, we felt better. In the scoring category where the teacher union’s endorsement matters, we lost 20 fewer points than the Corzine Administration had. Why? Because we got many other stakeholders on board and convinced reviewers we would be able to implement our reforms even without the union’s endorsement. Meanwhile, though many of our reforms were still just in the proposal or piloting stage, the reviewers liked our reforms so much that they still gave us some points for them.

In fact, while possessing the same set of disadvantages, our June application scored 51 points higher than had Governor Corzine’s in January. Add in the points that Governor Christie forfeited and we would have been up over 65 points. Our reform plan, and the work we did bringing diverse parties together to support it, is something my team and I were and remain proud of.

Early that afternoon, an e-mail arrived from Maria Comella, Governor Christie’s Communications Director. Maria sought a response to questions she had been emailed by Lisa Fleisher, a *Star-Ledger* reporter. The reporter quoted grant reviewers who said New Jersey lost 5 points because of missing information. “Did the State realize this supposed error in

advance and try to fix it?” the reporter asked. I wrote an e-mail back to Maria that confirmed the reviewers’ accounts and answered the reporter’s question directly. “We did not, as the reviewers note, provide Fiscal Year 2008 budget data. We did not realize the error in advance, and the competition rules did not permit fixing of the error post-facto.”

Maria e-mailed me another question: “When did we realize the error? Did we not notify U.S. DOE of the error before we did our in-person presentation?”

I e-mailed back: “We didn’t let the U.S. DOE know we had made the error because we didn’t know we had made it -- not until a panelist asked us about the Fiscal Year 2008 budget data. When we were asked about it, we checked our appendices. All we could do was confirm that we had erred -- the 2008 data was not included.”

I believe speaking the truth is a wonderful policy. The truth in this case is that we made a mistake when putting together our application. In no way did I try to spin things otherwise.

A little while later, the Governor’s Chief of Staff, Rich Bagger, called me, with Maria Comella on the speakerphone with him. He asked whether we had perhaps tried to submit the missing information to the U.S. DOE after our interview? No, I responded, the competition rules did not permit the provision of new information. The rules of the grant competition were inflexible. Information provided after the application’s due date -- whether leading up to, during, or after our interview with grant reviewers -- would not have been accepted. I told Rich that no one on our team could provide the missing numbers from memory, and made clear that we couldn’t produce the information from any other papers we had with us.

Even if we could, I reinforced, we would not have gotten points. We had only one way to redeem the 5 points at stake: find the missing information somewhere in the application papers we had submitted. But we could not find the missing information in the application -- it was not there.

Rich then asked me if we had said anything about the missing information. I said I thought at some point a reviewer asked me whether they had given us a fair opportunity to find the missing information, and I said "yes," and added, as an aside, that we did meet the grant's education spending criterion. I told Rich that my memory relating to this exchange was not totally clear, but that was my best recollection of it. After Rich had asked all of his questions, Maria ended the conversation with the words, "Well, it was a mistake, then." With those words she was essentially communicating, as I had in my e-mails to her, that the only way to accurately sum up for the press what had happened was to admit my team made an error on the application and leave it at that. But the idea that you simply admit making a mistake must not have sat well with the Governor because the next morning, while I was at my office, I received a phone call from him.

The Governor was on speakerphone and Rich Bagger was with him. The Governor said he was angry about the missing information in our grant application, but that no one was going to lose their job over it. He said he was about to do a press conference about the matter, and that he believed it is always better to be on offense than defense, so he would accept responsibility for the error, and then go on offense against the Obama Administration. He was going to try to make the story about their picayune rules. He was going to say that I gave the reviewers the missing

information, but the Obama Administration refused to give us the points we deserved, and that this showed they put bureaucratic rules above meaningful education reform.

I interrupted and told him not to claim that I had provided the missing numbers to our grant reviewers. I stressed that I did not provide the missing information; I did not have it. Asked, by Rich I think, about commenting that we met the criterion, I confirmed it. It was my best recollection of things, and Dan Gohl's testimony has since supported that remembrance.

I also said that the United States Department of Education might still have \$100 million dollars left over in its Race to the Top account, and that we should ask Secretary of Education Duncan to give it to New Jersey as the first-runner-up state: the state next in line for funding. The Governor said he liked that idea and that I should draft a letter to Secretary Duncan. Finally, somewhere in the conversation, I said we would review ways to improve our grant preparation process so we never again make a similar error.

I was not able to watch the Governor's press conference because I had a meeting with Assemblyman Patrick Diegnan, the Chairman of the Assembly Education Committee. But later that afternoon, while I was working on the letter to Secretary Duncan requested by the Governor, I saw a transcript of the press conference on the web. Here is some of what Governor Christie said:

“When we went in for the personal interview, two weeks before the decision was made, they raised the issue with us. Commissioner Schundler gave them the '08 and '09 numbers.

“During that interview this issue was raised and Commissioner Schundler gave them, in the interview, the numbers for '08 and '09 because the mistake was raised.”

I don't know if it was intentional, but in these two instances, the Governor said precisely what I told him not to say. I also knew it was going to create a problem, if for no other reason than because the grant interview was videotaped. When the videotape came out, the news story would no longer be about Obama's picayune rules; it would be about the Governor's misstatements.

I emailed Rich Bagger a draft of the letter I was writing to Secretary Duncan, and asked Rich if he wanted any changes. My letter had a sentence that read as follows: “Our application did not include one sentence in Section (F)(1)(I) which had appeared in previous drafts -- a sentence establishing that New Jersey increased its spending on education as a percentage of total state revenues from 36.9 percent in 2008 to 39.6 percent in 2009, a fact that we had noted in New Jersey's Round 1 application.

Rich e-mailed me back his edited version of the letter. He made a change to this sentence. It now read this way: “Our application did not include documentation in Section (F)(1)(I) establishing that New Jersey increased its spending on education as a percentage of total state revenues from 36.9 percent in 2008 to 39.6 percent in 2009, a fact that was demonstrated in New Jersey's Round 1 application and confirmed verbally during our August 11 presentation.

Rich's edit had me saying that I gave the reviewers the missing numbers. That raised red flags with me. Rich knew I had not given

numbers to the reviewers. He had learned about it from the e-mail I sent to Maria Comella early Tuesday afternoon. He knew about it from the conversation I had with him and Maria later that afternoon. And he knew about it from my Wednesday morning conversation with the Governor, during which Rich was on the speakerphone, too. My point had been clear: I did NOT give any numbers to the reviewers. And yet Rich wanted me to say that I had -- and in a letter to the United States Secretary of Education, no less.

I now feared I was being set up. Rich was with the Governor when he gave his press conference. He probably cringed when the Governor misspoke, just as I did when I read the transcript. The Governor's misstatement could easily become an embarrassment. I feared they were setting me up as a scapegoat.

I spoke with Rich on the phone and told him I would not accept his edits. I had not given the missing numbers to the reviewers and I would not say that I had. Rich said he would rework the sentence and later emailed me an edited letter that I found acceptable. The key sentences read: "Our application did not include documentation in Section (F)(1)(I) establishing that New Jersey increased its spending on education as a percentage of total state revenues from 36.9 percent in 2008 to 39.6 percent in 2009 -- a fact that was demonstrated in New Jersey's Round 1 application). In addition, it was confirmed verbally during our August 11 presentation that New Jersey satisfied this criteria. "

I might have written them differently, but these sentences were acceptable to me. They don't have me claiming that I provided the missing numbers to the reviewers. They just have me saying that New Jersey meets

the education spending criterion that relates to the points at stake, a statement subsequently corroborated by Dan Gohl's testimony. I signed the letter and sent it off to Secretary Duncan.

On the very next day, the United States Department of Education released the videotape of my team's interview. It didn't surprise me. The Governor, in the midst of his attack on the Obama Administration, said things that were false and now the Obama Administration was acting to embarrass the Governor about it.

I came out from an early evening meeting and saw I had an e-mail from Rich Bagger requesting that I call him immediately. I called and he said the Governor was demanding my immediate resignation for having misled him about the grant interview.

I responded to Rich that both he and the Governor knew that was not true. I could not have been more emphatic that no one from my team had provided the missing numbers. Rich didn't respond to that point, which of course he wouldn't. Rich then told me the Governor had left for a radio call-in program and was not available to discuss it, but that it seemed his mind was made up. He said he would call me later that evening, after the radio program was over, to talk more, which he did not. Finally, he said that in the morning I should report to the Governor's office to discuss transition issues.

From my home that evening, I forwarded the Governor a string of e-mails. My Department of Education team and I had been searching to discover how the application error happened. I had remembered that three months earlier, when I reviewed our draft language for that section of the application, I thought it should include current budget data, not just old

budget data. But I did not remember deleting the old data, and I could not imagine that I would have done so, since the question explicitly seeks the old data. I also concluded that if the consultants we hired to put our application together had given me draft text to review, and I edited out critical information, they would have told me when they looked over my edits. Such an error would also have been caught during the fact-checking process, I reasoned. Finally, everyone on the team had looked through their emails and computer files, including me, and none of us had any indication of how this change came to be made. All we could pinpoint was the date the error occurred -- in other words, when the relevant section of our application draft changed.

But a string of e-mail messages that went back and forth between our consultants and the Deputy Attorney Generals working on the application provided a possible lead. Those emails suggested to some of us that the mistake may have occurred during the fact-checking process. Until we actually knew what had happened, I didn't want to draw premature conclusions, so I had not spoken with the Governor about this. But now I was being fired, and I figured part of the reason had to be the Governor's belief that DOE made the error and, as its Commissioner, I was responsible. I decided to let the Governor know that the error may well have occurred during a fact-checking process that involved two departments -- not just the DOE -- and sent him the email string we had discovered.

I learned a few days later that one of our consultants finally found in her boxes of papers what we had been looking for: the answer to the question of how the missing information got dropped from the application. It turns out that I had crossed out the key words while hand-

editing text. I have now seen the page with my hand edits. The question to which the text responds is not on the page. There is simply a section title. My edits make the text a better fit for the section title, but make the text less responsive to the specific question that was asked.

I have also heard that our consultants made some edits to the text after I made mine. I haven't personally seen the evidence for this. This suggests we both made an enormously basic error. I feel terrible about this. Our errors contributed to New Jersey not winning \$400 million in Federal grant funds. So if the Governor had given us time to discover how the error occurred, and then fired me for it, I would still feel devastated, losing a job I loved, but I would not feel I had been defamed.

I told the Governor and his staff the truth: I did not give the missing budget numbers to the U.S. Department of Education's grant reviewers. I spelled this out in my Tuesday e-mails to Maria Comella. I said it repeatedly during my Tuesday phone conversation with Maria and Rich Bagger. I stressed it during my Wednesday morning phone conversation with the Governor, with Rich Bagger on the speaker phone, who already knew I had not given any numbers to the grant reviewers. And I refused to sign a letter to Secretary Duncan that misrepresented the fact. We're not talking about a situation where there might be a misunderstanding by the Governor and his team. We're talking about a point I made again and again.

Telling the truth is important to me. And the accusation that I misled the Governor to hide a poor interview performance is utter nonsense. I handled the reviewer's question appropriately and my team and I earned New Jersey a larger point gain from our interview performance

than any other state achieved in either of the two rounds of this competition. Finally, I knew that the interview was being videotaped. If you don't know whether you should believe in my honesty or our effective presentation performance, at least trust in my common sense: there is no way I would lie to the Governor about having provided the '08 budget numbers, knowing that such a lie would be brought to light.

I have thought about the possibility that beyond my being a scapegoat for his misstatement, the Governor might be angry at me for not telling him the interview was videotaped. In my defense, I never believed I needed to say, "Governor, stick to the truth, there's a videotape." Perhaps I should have.

After all, I may have misremembered by a few minutes precisely when, a few weeks earlier, I had made a comment about New Jersey meeting the grant's spending criteria. But it's hard to imagine how, within a matter of minutes, the Governor could forget a point I made to him emphatically.

Perhaps he just accidentally misspoke when he said I provided the missing information -- you know, gotten on a roll and said the wrong thing. But then he would have had to accidentally misspeak again, just a few minutes later, when he repeated the same falsehood. The accident thesis seems unlikely, but you can draw your own conclusions. The only thing I'm sure of is that the Governor knew I didn't provide numbers at the grant interview. Even before I personally told him, I have to imagine that Rich and Maria had already told him when briefing the Governor on this matter. I told Governor Christie and his staff that I did not provide the numbers. The documentary evidence backs me up. Reporters should ask the

Governor a direct question: "Is it true Bret Schundler told you that he did not provide the numbers?" If he says, "No," ask him for his evidence. If he says, "Yes," ask him why he made the claim that I provided the numbers -- remember, twice -- during his press conference.

I mentioned that the Governor told me he likes being on offense, not defense. As a former prosecutor, that it is not surprising to me. Prosecutors construct their argument and press it. In this instance, the argument the Governor wanted to make at his press conference was that New Jersey lost out on \$400 million because the Obama Administration has stupid grant competition rules. It would have supported the Governor's argument if I had, in truth, given the reviewers the missing information, and they just refused to give us points. But that is not what happened. And the Governor knew that before he commenced his press conference on the matter.

The Governor ignored my correction of his mental script. Whether accidentally or on purpose, he went ahead and said what he had wanted to say from the beginning. He shouldn't have. Good prosecutors don't support their argument with claims they know are false. And they don't make charges against people they know are innocent.

SENATOR BUONO: Thank you, Mr. Schundler. I appreciate you doing that.

I had a question: You had mentioned on page 2 of your testimony that -- and some of the questions I asked have already been answered, but I want to just clarify some points that you made to make sure I understand your answers. You state that since you had kept the Governor's Chief of Staff "abreast of my discussions with the union," and

then you go on -- that it surprised you when the Governor called you the next morning and loudly expressed his unhappiness with the agreement. So could you-- What exactly was the role of the Governor's Chief of Staff in the pursuit of these Federal funds? It sounds as though he was the person who signed off on agreements as you were negotiating with the NJEA. Is that how it worked?

MR. SCHUNDLER: I would say, more generally, that from the beginning of my tenure through this point, the Governor's Chief of Staff was the person who I kept abreast of developments in the Education Department. The Governor's Office developed a *two-chiefs system*, they called it.

SENATOR BUONO: What is it? Say it again?

MR. SCHUNDLER: A two-chiefs system.

SENATOR BUONO: Two chiefs.

MR. SCHUNDLER: Chief of Staff Rich Bagger and Chief Counsel Jeff Chiesa. And they each have staffs -- the Chief of Staff has a Policy staff, the Chief Counsel has Deputy Counsels, or Assistant Counsels. There's somebody in the Policy staff who is assigned to Education -- that's Gregg Edwards. And Susana Guerrero in the Chief Counsel's Office is assigned to Education. After--

SENATOR BUONO: And who's that, do you know?

MR. SCHUNDLER: Susana Guerrero.

SENATOR BUONO: Susana Guerrero.

MR. SCHUNDLER: She's an Assistant Counsel or Deputy Counsel in the Governor's Office.

After this incident I began to -- along with speaking to the Chief of Staff directly or e-mailing the Chief of Staff directly to keep him abreast of things, I began to also try very assiduously to make sure that Gregg Edwards and Susana were kept clearly abreast of things. And I think that was an effort by the Governor's Office to make the amount of information coming into them more manageable.

SENATOR BUONO: So there was-- There actually was a process.

MR. SCHUNDLER: Right.

SENATOR BUONO: I wasn't sure there was a process in place for the Office of the Governor to participate and become, obviously, involved and informed about the negotiations as they were ongoing. Is that fair to say?

MR. SCHUNDLER: Correct.

SENATOR BUONO: That there was a process in place?

MR. SCHUNDLER: Right.

SENATOR BUONO: Let's talk a little bit about the-- You mentioned something about the three reform issues that you compromised on. And with respect to the first two, let's go through it.

The merit pay versus bonus pay issue. This was something that was discussed and there was a meeting of the minds on this. And then-- Could you just walk through it? So then you-- There was an agreement, you told the Chief of Staff, Rich Bagger, and then you assumed that Rich conveyed it--

MR. SCHUNDLER: By and large, with regards to these kinds of things, what I would do is I would send information over saying, "This is

what the NJEA would like, and this is what I believe we should do about it.”
I didn’t always get explicit comment back -- yes or no.

SENATOR BUONO: Right.

MR. SCHUNDLER: My expectation was that if something I had said was not acceptable I would be told it was not acceptable.

SENATOR BUONO: You would know -- you would know, yes.
And so that was what happened with the first compromise.
The second compromise which dealt with the distribution of merit dollars -- correct?

MR. SCHUNDLER: Exactly.

SENATOR BUONO: The bonus-- How they were distributed, whether it was school-wide, or-- And you reached a compromise on that as well.

MR. SCHUNDLER: The actual compromise there didn’t have to do with whether it was going to be school-wide or not. In our original proposal, we had a minimum of half the money which would be distributed on a school-wide basis. It could go into paychecks, it could be used to cover a school trip, and it could be used in different ways by the school. That was in the original proposal that we unveiled at the War Memorial to superintendents from across the state and other stakeholders like the union.

SENATOR BUONO: When was that, when was that?

MR. SCHUNDLER: That was in early May.

SENATOR BUONO: So you have been discussing these reform efforts over a period of months.

MR. SCHUNDLER: Well, we’d been working on these elements, and first trying to decide what we would put in our proposal, for a

period of months. Then we unveiled our proposal in early May. The application was due on June 1. So if you will-- What we were publicly proposing was only in the public domain for the last 30 days, or whatever days, between our--

SENATOR BUONO: But it wasn't overnight, it wasn't unexpected.

MR. SCHUNDLER: No. And again, in our proposal we had a minimum of half the dollars would be distributed on a school-wide basis, and up to 50 percent would go to individual teachers or teacher teams who were directly responsible for helping students who had been performing below the 40 percentile rank for their class -- who had helped them improve in their performance by a set number of points. And I think we were looking at 5 points.

SENATOR BUONO: But that wasn't what, ultimately, was agreed to.

MR. SCHUNDLER: Yes. And so what was different with the NJEA was that rather than have the State directly send checks to those teachers and teacher teams-- And let me highlight, the 50 percent going to the schools didn't change. What changed was that instead of the money that we sent to teachers or teacher teams going directly to them from the State, we would allow, at the school level, decisions to be made about the different approaches that might be taken to distribute that money to responsible teachers.

One of the thoughts I had was that we might, for instance, create a menu of options at the State level. That at the local school, they could decide which option they might choose. An example: A student

might have most of their classes with a single teacher, but might have, let's say, math with a different teacher, and might have a science with a different teacher. So who is the responsible teacher for that student? Is it just the teacher they spend most of the day with, or should those who are working with them on math explicitly get some points, especially since that's one of the areas that our standard tests cover.

So we might have different percentages that go to different teachers being implemented at different schools. They might try an array of different models, and that would give us the opportunity to gain data on many different models of distributing that money between the various responsible teachers helping students who are underperforming do better.

SENATOR BUONO: But essentially, as you said in your testimony -- and I'm reading the second compromise that you're describing now, that you agreed to -- was also minor.

MR. SCHUNDLER: Yes, I believe it was minor because it didn't change the fact that the money would go to individual teachers. It just allowed for a variety of different arrangements in that regard, and would allow us to gain quite a bit of data on these different arrangements to see which was most effective in encouraging improvements.

SENATOR BUONO: And just going back, if you will just for a moment, to the first compromise on merit pay. The way you described it is that you essentially just called it something else--

MR. SCHUNDLER: Yes.

SENATOR BUONO: --and said it was a pilot, even though every school would be required to implement it. Is that an accurate description?

MR. SCHUNDLER: Yes, it would be pilot in the sense that at the school level they were choosing what they wanted to try. And as you know we have not had merit pay in New Jersey, so for every one of them it would be exploring how this approach that they were taking would work. But I did see it-- That first compromise was very much one of language in the document, and it did not preclude our using the words merit pay when we talked about it.

The issue here was that the NJEA's state leadership didn't want to ask their local to sign a document specifically endorsing merit pay. So we took the words out of the document that the leadership would be asking the locals to sign.

SENATOR BUONO: So this was agreed-- Give me a sense of the time period. Was this all in the week leading up to the agreement -- the week of May 26, May 27, May 28?

MR. SCHUNDLER: We'd been in discussions with the NJEA for a long time, but the NJEA had, basically, said no to our proposals, and we were not willing to forego those reforms. And actually, in one of my updates to the Chief of Staff, I let him know that the NJEA had rejected our reforms, and I thought that was it. That was on Wednesday.

SENATOR BUONO: And Wednesday -- that would be May 26, because I have an e-mail here from Vince Giordano of the NJEA to Willa Spicer regarding, apparently-- That this is when they had provided to you their attempt at finding a common ground. They had specific suggestions.

MR. SCHUNDLER: Yes, they had come back with suggestions that represented very significant compromises, and we were not willing to

accept them. So we said no. I let the Governor's Chief of Staff know that they had come back with requests that we couldn't say yes to, and I thought that was probably it.

The NJEA then asked for one last opportunity to come back to me.

SENATOR BUONO: And that would have been Thursday, May 27?

MR. SCHUNDLER: Yes.

SENATOR BUONO: And before we get to the last compromise, which is the issue in question, the RIF issue -- reductions in force -- by Thursday, May 27, there was no deal, no compromise. You had reached an impasse.

MR. SCHUNDLER: On Thursday morning, May 27, we were, in effect, waiting for one last outreach by the NJEA. Because again they had come back and said, "This is what we can do," in effect, and we had said no, we can't accept that. And they said, "Give us one last opportunity to come back with a proposal." And so on Thursday morning we were waiting to receive that. In effect, they agreed to almost everything that we had said we could not compromise on. There was one particular area that they said they needed us to compromise on, and that had to do with the reductions in force issue.

SENATOR BUONO: Or seniority -- they referred to it as seniority?

MR. SCHUNDLER: Yes.

SENATOR BUONO: Okay. I'm actually looking at an e-mail from the Department of Education, Willa Spicer to Vince Giordano --

Thursday May 27, as a matter of fact, at 1:00 p.m. -- thanking him for the conversation and continued partnership. "As we discussed, New Jersey's application for Race to the Top, Phase 2, we have made substantial changes based on your feedback." And it says that "seniority will not be changed in the Race to the Top application." That was Thursday at 1:00 p.m.

MR. SCHUNDLER: Right.

SENATOR BUONO: So by then an -- agreement had been reached by then?

MR. SCHUNDLER: Yes, that represents our agreeing on that make-or-break issue. So they had come back to us-- The issue that they said was absolutely critical was the seniority issue. And we had said, "Okay, we can live with that." On seniority relating to RIFs -- reductions in force -- we said we can live with that and, at that point then, we, in effect, had an agreement.

SENATOR BUONO: I guess I just want a clarification. I'm not-- I understand that there was a difference with respect to that last agreement -- that last compromise. Well, it wasn't a compromise, it was, basically, this is one thing that you-- The one thing that you felt -- the 5 percent, that you relented on. And you agreed to it prior to informing the Governor's Chief of Staff. So you agreed-- So there was a difference in the sequence of the approval process, with respect to this last one. Is that-- I'm trying to read your--

MR. SCHUNDLER: Yes, and most-- Correct -- in most instances I had said to the Governor's Chief of Staff, "Here's how things are. If the NJEA is willing to support this, this is the language we'll use in

the document. If the NJEA is not willing to support -- come on board -- this is the language we'll use.”

I did that because there was a bit of a balance between how aggressive the reforms were and the points you'd get if you had broader stakeholder support. So if we weren't going to get their support anyway, then we're going to throw in the kitchen sink--

SENATOR BUONO: Right.

MR. SCHUNDLER: --to try and get as many points for bold reform proposals. If they would come on board, and there was a minimum that we had to give away in terms of bold reform, that would be an optimal situation. But I kept the Governor's Chief of Staff abreast of the status of discussions. The one thing I had said in advance was that we would surrender on the seniority issue. After they came back on that Wednesday and said they would agree to the other requirements we had, but they could not agree to a change in the seniority statutes -- at that point I said yes to them; I did not clear it in advance with the Governor's Chief of Staff.

SENATOR BUONO: But was the Governor's Office supportive of your efforts leading up to that agreement, with respect to the other reforms?

MR. SCHUNDLER: Yes.

SENATOR BUONO: And did the Governor's Office ever draw a line in the sand that the absence of a particular education reform element would sink the support of the Administration?

MR. SCHUNDLER: No. The Chief of Staff had come back after I. I think it was probably on Tuesday or Wednesday, when I had sent him an e-mail saying -- talking about the status of things -- he had come

back with one e-mail saying just don't, in effect, undermine the, let's say, the reform agenda. And I did not believe that this particular reform was undermining our reform agenda. It was, in my mind, a relatively minor concession that was important to the NJEA, and we would gain a lot of points through having them onboard without having to give up much of anything.

SENATOR BUONO: Well, let's talk a little bit about that. I didn't know what a RIF was until this occurred. Can you explain that? And one of the things you said -- and I don't know if it's in your testimony or something you just said to me when I interviewed you -- you said "we got so close; and RIFs don't happen that much in education anyway."

MR. SCHUNDLER: Right.

SENATOR BUONO: Can you explain that?

MR. SCHUNDLER: Yes, that's in my testimony.

SENATOR BUONO: That's your testimony? Okay.

MR. SCHUNDLER: Right. Reductions in force typically happen as a function purely of economics. A school district doesn't have funds; it needs to reduce staff. It will implement a reduction in force. Current New Jersey statutes require that if you're having a reduction in force and it affects teachers, teachers have to be dismissed on a seniority basis. So you would have untenured teachers who can be fired first. They have no tenure, they can be fired at the superintendent's discretion, in effect. After untenured teachers are released, at that point, once you get into the tenured ranks, it is absolutely a question of seniority and current law.

SENATOR BUONO: So the one with the shortest amount of tenure is the first to be laid off.

MR. SCHUNDLER: Yes.

SENATOR BUONO: Okay.

But whether or not the application mentions-- So let's get this clear: The application was silent with respect to any reforms, any RIF reforms.

MR. SCHUNDLER: The application that-- My proposed plan included a change--

SENATOR BUONO: Right; I understand.

MR. SCHUNDLER: --in the RIF provisions. And that's what the NJEA said they could not accept--

SENATOR BUONO: Right.

MR. SCHUNDLER: --and that's what I agreed to take out of the proposal.

SENATOR BUONO: But I guess the point I'm trying to make is that, just to put it another way: The fact that RIFs weren't mentioned in the application that was ultimately rejected by the Governor doesn't mean that the Administration couldn't do it anyway. I mean, we had to pass legislation whether or not the application mentioned the issue.

MR. SCHUNDLER: Yes, that's correct.

SENATOR BUONO: Okay.

MR. SCHUNDLER: This was-- An application for grant funds is an application for grant funds. It is not a contract. It wasn't us negotiating with the union where, in effect, we were saying, "We'll give you

this, if you give us that.” What the discussion was: What can the union endorse--

SENATOR BUONO: Exactly, right.

MR. SCHUNDLER: --in terms of an application to the Federal Government? So while taking that out of the application -- and that application-- There are some commitments made. The application commitments are made to the Feds. We say “We commit to you that we will implement these reforms in exchange for the grant dollars it will provide.”

SENATOR BUONO: Okay.

MR. SCHUNDLER: So we were committing to the Feds that we would implement everything in the application. We were not saying that there weren't other things we'd also do.

SENATOR BUONO: Right.

MR. SCHUNDLER: For instance: the Opportunity Scholarship Act is legislation that is not talked about in the grant application. It is something that was very much a part of the Christie Administration education agenda. Our not including it in the application did not mean that we could not pursue it in the Legislature.

SENATOR BUONO: In other words, what the application embodied was the series of reforms that the NJEA and a number of -- not all -- but a number of the local affiliates had bought into -- had endorsed.

MR. SCHUNDLER: In effect, the NJEA-- What the application-- Once all signatories are on it, what the application represents

is a commitment made by those signatories to the Federal government vis-à-vis what's in the application.

SENATOR BUONO: Is it fair to say that the one sticking point up until the very end was the how to structure layoffs, or the RIFs?

MR. SCHUNDLER: That was--

SENATOR BUONO: Which doesn't happen very often.

MR. SCHUNDLER: Yes, and basically the NJEA said if that's in the application, we can't endorse the application. If you take it out of the application, we can endorse everything else.

SENATOR BUONO: Given that it doesn't happen very often, and given that we could have pursued it anyway and we would have had to pursue legislatively whether it was mentioned in the application or not, it just seems that this was the one sticking point that sent the Governor over the edge, apparently. It just seems almost trivial given what was at stake.

MR. SCHUNDLER: I personally believe that the application -- everything we had in there -- was worth submitting. Again, we-- No doors were closed vis-à-vis other things we might endeavor legislatively.

SENATOR BUONO: So after you communicated that last agreement to the Chief of Staff, then what happened? Did you communicate it directly to the Governor? How did that work?

MR. SCHUNDLER: I believe I texted the Governor saying we had an agreement with the NJEA --- I think I just said that. I also e-mailed the Chief of Staff who, I believe, was in Massachusetts on that particular day, and said we had an agreement with the NJEA; would he like the details? He said yes. We spoke on the phone. Ultimately, we then began working on a press release with the Communications Office, and the Chief

of Staff directly worked -- I assume via phone and e-mail -- with the Communications Director on fashioning the press statement. The ultimate press statement is a very matter-of-fact, bland statement. Our thought was we didn't want to rub the union's face in the fact that we had gotten them to agree on almost everything we wanted.

SENATOR BUONO: So it was conciliatory, somewhat?

MR. SCHUNDLER: Yes.

SENATOR BUONO: I didn't see it, but I did see the press account in the *Star-Ledger*.

MR. SCHUNDLER: Right.

SENATOR BUONO: So you said that you first learned that the NJEA agreement with the Department was unacceptable, when?

MR. SCHUNDLER: The Governor called me on Friday morning. I was about to go to a meeting at Liberty Science Center and I got a call on my cell phone.

SENATOR BUONO: Did you have an opportunity to voice your opinion concerning his decision to abandon it, just saying much of what you're saying here, I would imagine? Did you discuss the potential problems?

MR. SCHUNDLER: In that conversation, the Governor had not yet said he was definitely going to abandon the agreement.

SENATOR BUONO: Well, what did he say? Did you say that in your testimony? I apologize -- could you just reiterate it.

MR. SCHUNDLER: He talked about the fact that he had read the *Star-Ledger* account and then he had heard Jim Gearhart that morning. That Gearhart was saying that he had caved in to the union on these points.

And he had said he had been demeaned by the union; that all of their attacks on him -- he was not going through the fire, with all of their attacks on him, merely to cave in to the union. And he said that emphatically, and for a rather extended period of time.

SENATOR BUONO: And what were your instructions, if not to withdraw the application? What were your instructions then? To rewrite the application?

MR. SCHUNDLER: No, not yet.

SENATOR BUONO: Okay.

MR. SCHUNDLER: I ultimately had a chance to go back-- In that conversation, I had a chance to respond and said, "Governor, we are not caving in to the union. The union has now agreed to almost everything we've asked for. The one significant point which -- the one point which might be considered significant has to do with the reductions in force issue -- the seniority issue." I tried to help the Governor understand that even there we weren't having to give up on our reform agenda; that there were lots of elements of our education reform agenda that are not in the Race to the Top application. The application-- The Feds were awarding funds with regard to some specific reforms that they were seeking. And I tried to make it clear that we could go back and try to implement the reform with regard to RIF. And nothing precluded us from doing that. But that if we had the unions onboard with us, I was almost positive that we would win the \$400 million -- that the combination of reforms that were in the agreed-upon package with the union's endorsement would be enough to win.

At the close of that conversation, the Governor ultimately said-- He in effect said he was even more upset, then, that we'd allowed a victory to be spun as a defeat. And I had said we had--

SENATOR BUONO: I don't understand that. I don't understand what you mean by that. Can you repeat that? A victory-- I'm sorry, I didn't catch that. A victory to the--

MR. SCHUNDLER: That in our own description of the agreement we had with the NJEA, we allowed them to, in effect, say that we had compromised on so many fronts. And my view on that was that (a) they will spin it how they want to spin it no matter what, (b) we'll have plenty of time to talk about why we didn't, in fact, cave in on points. And we could go to folks like Jim Gearhart and we could go to anyone else who was saying that we had caved in, and we could highlight for them the fact that we had not -- that we had plenty of time. But that "discretion being the better part of valor," while we're trying to have the union leadership sell the locals on signing memorandum of agreement, it might be better to let them say it was a compromise on all sides. That would facilitate their successfully getting locals signed up. And then we would have not just the statewide endorsement, but would have memorandum of understanding or memorandum of agreement from locals all throughout the State of New Jersey.

So I suggested that we should let it be seen as a compromise on all sides, then we could go out and talk about that fact that we had gotten almost everything we wanted in this agreement later. And if we wanted to highlight that fact, we could go and specifically introduce the legislation on the things that we didn't agree on. It wouldn't have been part of the Race

to the Top grant application, but we could highlight for anyone -- let's say Jim Gearhart or anyone else who might misunderstand things -- we could highlight in a very direct way for them that we were not giving up on our reform agenda in any way, shape, or form.

SENATOR BUONO: I'm not clear on this. So the conversation that you had with the Governor on Friday: the issue, the RIF issue, any of the reform issues specifically weren't discussed? It was just--

MR. SCHUNDLER: No, we did discuss that.

SENATOR BUONO: It was, okay.

So what were you, then, instructed to do?

MR. SCHUNDLER: I was highlighting for him that-- We did discuss the RIF issue, and I highlighted for him that it really wasn't a compromise; that we could continue-- We could go out legislatively and try to amend seniority. The one thing we weren't doing is including that in our grant proposal. So, in short, the conversation -- after making the point that we really weren't giving up on anything, and the Governor, in effect, acknowledging that -- he then expressed his displeasure about the communications approach that we had taken, because it was allowing people to misunderstand and think that he had compromised on fundamental principles. And, again, I tried to suggest to him that we could show people that we had not, and that we shouldn't allow the agreement that we worked out-- We shouldn't throw out the agreement we had worked out because on a short-term basis some people might misunderstand the terms of it.

SENATOR BUONO: So then when were you instructed to rewrite the application? Not during that conversation?

MR. SCHUNDLER: What the Governor said, at the close of the conversation, was that-- In effect -- I can't remember all the specific language -- but in effect I knew at the close of that conversation that there were going to be more discussions on this with Maria Comella and Rich Bagger, and that basically the Communications Office was going to think about how they might address this communications problem. And the Governor would spend some days thinking about it, and then make his decision later on.

The Communications Office-- Their view was that the best way to deal with this was not to do anything -- was just not to address it, was just to let it go. So I specifically asked Maria Comella should I or someone speak with Jim Gearhart and fill him in on the realities of the agreement. And her basic thought was just let the thing go -- let's not comment on it.

SENATOR BUONO: So this was Friday afternoon, I guess? Give us a time period.

MR. SCHUNDLER: I don't remember-- It would have been somewhere between-- It would have been Friday sometime during the day, I think.

SENATOR BUONO: And so when was the instruction given to the Department to change the application?

MR. SCHUNDLER: I believe that would have occurred on-- There was a meeting at a diner that I had. The last meeting that I remember where we were discussing this was with myself; and the Chief of Staff; and Jeff Chiesa, the Chief Counsel. And I believe there was a fourth person there; I'm not remembering right now who that was. It may have been Wayne Hasenbalg, who is the head of the Policy office in the Chief of

Staff's office. That, I believe, was likely on Saturday. Again, that was at a diner.

I believe the ultimate decision, that we were not going to go forward with the agreement, was made on Sunday.

SENATOR BUONO: And when was the application due?

MR. SCHUNDLER: On Tuesday.

SENATOR BUONO: At what time -- noon or something?

MR. SCHUNDLER: No, I believe it was at 4:00 or 5:00.

SENATOR BUONO: Okay. Did you express any concern with the potential issues with respect to accuracy and the haste accompanying changing the application?

MR. SCHUNDLER: No.

SENATOR BUONO: Did Wireless express any concerns they had regarding that short timeframe, that they had to complete a final edit and review--

MR. SCHUNDLER: Well, Wireless-- I don't believe-- Again, this is not something where I reviewed-- I don't think I had any notes on this. But this is not something that I reviewed, because it's not been a question we've been talking about. But I don't believe I informed Wireless, or anyone else, that we were going to have to change the application until Monday morning.

SENATOR BUONO: And you did -- you yourself--

MR. SCHUNDLER: No, I could be wrong about that.

SENATOR BUONO: Okay.

MR. SCHUNDLER: It could be that it happened on Sunday afternoon. But yes, in effect, when I was instructed to begin the change

because there was-- Between the time on Friday when I had the conversation with the Governor and the time when the trigger was finally pulled, there was the possibility the Governor might approve the agreement with the NJEA ultimately. And once--

SENATOR BUONO: By Sunday? And still on Sunday, you had hope held out?

MR. SCHUNDLER: I'm not 100 percent sure about that, but I think it was on Sunday-- I think it was on Sunday, not Saturday, that I basically got the word that the agreement was going to be shelved. And I believe it was likely Sunday that I was told when they wanted things communicated to others on this matter. So I believe it would have been Sunday that they would have told me either to communicate with my staff about this that afternoon, or to communicate with my staff about this on Monday morning. And I don't remember whether it was Sunday afternoon or it was Monday morning, but I did not communicate with my staff until the appointed time I was instructed to.

SENATOR BUONO: And that was when -- you don't remember exactly?

MR. SCHUNDLER: Yes, I'm not sure if it was Sunday afternoon or Monday morning.

MR. SCHUNDLER: But Sunday-- Your team wasn't assembled on Sunday. Were they in over the weekend?

MR. SCHUNDLER: I don't believe that people were in the office on Sunday. That was a holiday weekend. Now, again, it may have been Sunday that I went to people, and if it was Sunday when I went to

people, people would have begun scrambling to make the necessary changes on Sunday.

But I have to say what took time was not necessarily making changes in the application language, because as I mentioned, there weren't many changes to make in the application language. What took some time was going through all of the stakeholder endorsements and figuring out which had come before the NJEA endorsement--

SENATOR BUONO: That would withdraw them as a result.

MR. SCHUNDLER: Yes. Because we didn't think-- Obviously, it would not have been appropriate to submit an application with endorsements of people who had given those endorsements at a time when they believed the NJEA was in agreement with us.

SENATOR BUONO: Then comes Monday, and I think that was when the Governor -- either Sunday or-- I think it was Monday that the Governor issued a statement characterizing the negotiated application as a *contrived consensus*. Obviously you don't agree with that.

MR. SCHUNDLER: The bottom line is, I believe the ultimate application reflected the vast majority of the things that we proposed at the War Memorial when we first went public with our plan.

SENATOR BUONO: You described when we were talking -- I don't think this is your testimony -- you described to me the Governor's abrupt reversal of support for the application as *appearance over policy*. What did you mean by that?

MR. SCHUNDLER: Well, I mentioned in that Friday morning conversation that the Governor was talking about how angry he was that we had compromised with the NJEA. And then I had a chance to respond, and

I said “Governor, we really are not compromising almost anywhere. Taking the words *merit pay* out is simply a matter of taking words out, but all the mechanics are still in the application. Changing whether we send the checks directly, or we have school districts look at different ways that they can distribute funds to individual teachers or other teachers who are responsible for students’ learning gains, and allowing a variety of different pilot approaches in different districts -- using that kind of language doesn’t really substantively change things. We will have merit pay; we will have people getting checks because students who they were teaching are doing better. And we’ll have a lot of data from a variety of different arrangements with regard to how that money is distributed, instead of having just one arrangement that the State implemented for all districts with data attached to that.” So I said this is not a big concession. And when I stressed that we could still pursue the seniority law changes, they just weren’t in the commitments we were making to the Feds -- I think when the Governor came to understand that, his concern became more about how it would be perceived.

Now, I want to say, however, that I believe it may also have been a question in the Governor’s mind, at that point that he’s looking at it, simply you support good policy, you don’t ever support anything but good policy. You don’t compromise with good policy. So I believe the Governor was also, in his mind, thinking you ought not to have layoffs which are purely a function of seniority. You shouldn’t have great teachers laid off before teachers who are not very good.

SENATOR BUONO: So you weren’t questioning his sincerity on the policy issue, per se?

MR. SCHUNDLER: I was not. I agree with the policy that we should change the seniority rules.

SENATOR BUONO: Right.

MR. SCHUNDLER: I was simply trying to help him understand that nothing in our submitting this application would preclude our going forward and trying to change the statutes with regard to seniority.

SENATOR BUONO: And given that it occurred so infrequently; and that balanced against concessions that you did obtain from the NJEA and their local affiliates, significantly outweighed this one reform.

MR. SCHUNDLER: Right. I believe there were three gains: There was the money itself, which I thought actually could-- I agree with the Governor that money doesn't matter when you waste it. There's lots of money that has been poured down a hole. And going after money without caring about what you're going to do with it doesn't make a lot of sense. But I believe that the \$400 million attached to our plan and all the different reforms that were part of it -- I think that \$400 million would have made a very positive difference.

I also believe we would have been able to get 90 percent of our education agenda done, because the plan represented 90 percent of our education agenda. There were things not in it, but most of what we want to change in New Jersey's public education system was in it.

I believe, with having the union's endorsement, we could have gone before the Legislature with a single, omnibus bill, in effect, that included all the elements that were in Race to the Top -- with the NJEA's endorsement -- and likely pass that very quickly. Then we could go back

with legislation over the things that they were not willing to endorse, such as the change in seniority rules.

SENATOR BUONO: Right. Did you get the sense that the bad blood between the Governor and the NJEA affected the Governor's ability to compromise at all?

MR. SCHUNDLER: I don't know, at the end of the day, whether the Governor's thinking was, "I'm not going to go forward with a proposal that doesn't include everything I believe in. I want this proposal to reflect my principles, period." That may have been his rationale. His rationale may have been, "I don't want anybody to think I'm caving in to the union." I'm not going to opine--

SENATOR BUONO: And that was the substance of your conversation on Friday morning, that that-- It was the perception, I think you said, that concerned him.

MR. SCHUNDLER: The substance of my conversation was that we didn't cave in; that we were achieving almost everything we wanted; that we weren't precluded from going back to achieve the last things we wanted. We weren't really giving up anything -- we were getting a lot.

SENATOR BUONO: So when you say that the Governor's concern was more over how the compromise was perceived in the media--

MR. SCHUNDLER: What I'm saying is not that that is necessarily the case, that that is the final factor that he decided upon. What I'm saying is it is a factor that he was thinking about.

SENATOR BUONO: Okay. Moving on to another subject matter, another issue that we wanted to cover, and that is the consultant,

Wireless. Who worked with Wireless directly? Can you give me a list? I know there must be more than one person, at least.

MR. SCHUNDLER: Those of us who-- You're saying from the DOE?

SENATOR BUONO: Yes.

MR. SCHUNDLER: From the DOE: myself, Willa Spicer, Jessani -- I'm thinking about the team that was most directly involved -- Bari Erlichson, I said Jessani Gordon. Andy Smarick was -- we had already agreed to bring him on but his start date had not come yet, but I did involve him in some discussions, even though he was not at the DOE all the time. He had them reviewing different texts and so forth.

We also had, I guess, Norris Clark, who worked with us on getting some of the endorsements and so forth. So there was a team of people who were working on the Race to the Top application -- Rochelle Hendricks. The people who were working on it most directly with Wireless day in and day out were myself and Willa Spicer. Also I have an assistant, Michael Blaustein, who was very much involved.

SENATOR BUONO: And did you-- I think you said already that you testified that they did not discuss the Governor's decision to change the application with Wireless until Monday morning?

MR. SCHUNDLER: Well, it was either-- What I testified is I don't remember exactly whether it was Sunday afternoon or Monday morning.

SENATOR BUONO: Okay, okay -- fair enough. What was their reaction?

MR. SCHUNDLER: Everybody was discouraged, but we also knew we didn't have a lot of time to dwell on it. So we went to work.

SENATOR BUONO: So I have an e-mail here that somewhat-- The DOE was working with Andy Smarick -- you mentioned him -- who was not actually an employee at the time. I have an e-mail that as late as the evening of May 27 he was working on editing the application. And let's talk a little bit about the infamous Section F, if we can. What was Andy Smarick's role in editing that? It appears that he had a role in the final stages of the editing after even you had your written--

MR. SCHUNDLER: I wouldn't describe it that way.

SENATOR BUONO: Okay.

MR. SCHUNDLER: We had-- As we were drafting the Race to the Top application, we sent it around to many different individuals to get their comment on it. And the comments could be on substance, or they might be just on clarity. We sent it around to a number of education reform organizations, as an example. And people were giving us their comment on it. So Andy -- I mean, it's a large application, as you know: It's 300 pages of narrative, and then 700 pages of appendix or so. But we had different people who were looking over different sections, and Andy might receive different sections and make comments on them. And even as those came back, it didn't mean that we ever, if you will, had a single final document. Because you might have five different people looking over sections, so you're getting comments back as they come.

And you're making decisions as to which of those comments you might respond to by making a change, and which you appreciate but you just don't agree with. Under any circumstance, we continued editing

the document until it was really submitted. There was never a point where we had a finalized document. For instance, when the NJEA agreed to various terms, it wasn't as if we had a finalized document and then we began editing again.

SENATOR BUONO: I understand. Well, actually, it's difficult-- I'm trying to reconstruct what happened, and it's not easy since I don't have all the e-mails and some of them are redacted. So bear with me.

But I know that in your prior testimony, and in your recounting of the chronology, that you had said that one of the problems was -- that you think, in your estimation, led to the error being made, is that you hadn't read the question along with-- Did anyone read the question?

MR. SCHUNDLER: I'm sure. I'm sure I read the question, too, at one point. But unfortunately, when that page came to me, it came to me with a section heading-- It may have come with the question attached -- I don't know. But if the question wasn't on the same page -- and I don't remember this very well. What I remembered: when we discovered that we'd made an error, that we had deleted the 2008 information -- and we discovered that at the interview with the Federal reviewers--

SENATOR KEAN: Madam Chair, I'm sorry to interrupt.

If I may-- I'm sorry, Commissioner -- if I may.

SENATOR BUONO: Yes.

SENATOR KEAN: At the beginning, we were not allowed to have a second individual seated in this Committee. We then have now-- We weren't given the statement to begin with. And now you're referring to

documents that the Minority members of the Committee have not been given.

SENATOR BUONO: No, that's not true. We're talking about-- I'm talking about e-mails that I have.

SENATOR KEAN: We-- At the very first that we've seen of these--

SENATOR BUONO: Well, the point is--

SENATOR KEAN: --response of the Committee, it was by your staff--

SENATOR BUONO: This is the point--

SENATOR KEAN: --which walked over, two minutes ago.

SENATOR BUONO: This is the point I'm trying to make. If you're trying to exercise some privilege which is not yours, you don't have standing -- you're not the witness, and you're not his attorney.

SENATOR KEAN: I am asking to have the same--

SENATOR BUONO: So we have rules, we have rules.

SENATOR KEAN: --documentation you have, Madam Chair.

SENATOR BUONO: You have everything-- Believe me, everything I have is pursuant to an OPRA request. And it's not a lot -- it's not very much.

SENATOR KEAN: And it has not been distributed through OLS to members of this Committee.

SENATOR BUONO: That's why the former Commissioner is here to discuss and figure out what went wrong. We're going through an elaborate process here to find out what happened.

SENATOR KEAN: If we were having a fair and open process, I would just ask to have access to the same documentation that you have.

SENATOR BUONO: Well, if we had a fair and open process you wouldn't be interfering with this hearing as you are every step of the way; and I don't appreciate it.

I've lost my train-- I guess you have, too, Commissioner

MR. SCHUNDLER: Yes, where were we?

SENATOR BUONO: Well, okay -- let's just -- everybody's losing their train of thought.

We're talking about Section F and the process -- the final editing process.

Now, let's talk about Wireless. I know that you said that you think at some point somebody read the question along with the answers. I have a question -- I'm not trying to make a point. So Wireless Generation was hired to ensure that the application was submitted properly, factually, legally, was edited. Did they-- I mean, the issue is that no one, apparently, proofread this application in its entirety, or this wouldn't have happened. That seems pretty common sense to conclude.

MR. SCHUNDLER: I believe ultimately it's clear, by virtue of the fact that the 2008 data wasn't included in the final application, that there wasn't a final check -- at least, a final check that was successful. It may have been that people were looking only at the answers when they were proofreading and checking, and not making sure that the answers were responsive to the question. That was my error, and I have to imagine that's the same error that Wireless made.

SENATOR BUONO: Well, there are press reports that state that you made the final edits to Section F. Is that accurate?

MR. SCHUNDLER: I don't know if I made the final edits, but, again, I have seen a page that had my handwriting on it, and I made the fateful edit. It was my striking out the 2008 budget data that caused it to be deleted.

SENATOR BUONO: So this is what I'm trying to clarify here: The press reports say that you were the individual-- In fact, I believe Willa Spicer testified that you had the final sign-off for all of the editing, including Section F, but not limited to Section F, and yet documents received in our response to an OPRA request suggested additional edits were made to Section F after it was changed to reflect your edits. So we're uncertain about who else edited Section F. We're just trying to get to the bottom of how it occurred.

In the Department-provided e-mails showing that on May 25 the Ms. Mannis (phonetic spelling), Wireless employee, e-mailed Section F to your assistant -- I think you actually provided this to the Committee -- for your review. And then the Department also provided a copy of your handwritten edits to Section F, after it was changed, to someone else; and there are additional edits. Do you-- Are you aware of that?

MR. SCHUNDLER: I actually don't know what the order of editing was.

SENATOR BUONO: Well, I can tell you that the Department provided copies of an e-mail to Andy Smarick two days after they provided the e-mail to you seeking his comments. So it was sent a full two days after the same section was sent to you for your edits, and it included your edits.

But there was a version -- this version deleted reference to the Governor and the Legislature, and it replaced it with the Governor and his executive team. To your knowledge, did you make that edit?

MR. SCHUNDLER: No, but I don't have the handwritten notes-- I don't have the handwritten edits in front of me here.

SENATOR BUONO: Okay. To your knowledge, did Wireless Generation or any of its employees have the authority to act independently to remove any mention of the Legislature? Or did you at any time-- Put it another way: Did you at any time direct Wireless to change Section F?

MR. SCHUNDLER: I don't remember all these particulars.

SENATOR BUONO: Okay.

MR. SCHUNDLER: What I can tell you is this: In the editing process, there were sections-- Again, it's a 300-page document. There were sections that I had an opportunity to get to, and there were sections I didn't have an opportunity to get to. I was not instructing Wireless, saying to them, "If I haven't read something, then don't submit it." We would not have been able to submit an application if I'd have given them that instruction.

So ultimately Wireless put together the application. They would give me sections that they thought were-- Let me put it this way: They would give me sections that were important. Remember that we had submitted in January, and we had gotten points for an awful lot of things in January. So we weren't inclined to rewrite all the sections that we had already scored full points on. We focused our attention on sections where we had lost points.

SENATOR BUONO: Yes, but the thing is, that's what I just don't get. Section F contained just factual information -- it was not relevant whatsoever to any of the reforms that were under negotiations. So why was it changed at all?

And the other thing that bothers me is how-- There were 12 different versions of Section F, and yet no one read the question -- they had 12 opportunities to read the question before they answered it and changed it. This is the stuff that drives people crazy about government.

MR. SCHUNDLER: Well, Senator, the only thing I can say is that I did not read the question, obviously, before I did that edit. I think I read through the original application back in January, but I did not read it before I made the edit, and I accept responsibility for not having done so. It was my crossing those words out.

SENATOR BUONO: I'm not trying to castigate-- We're just trying to figure out a better way to do this. I know that the applications are lengthy. I know they're voluminous. Do we really need to hire a consultant on this one? I mean, obviously we did, and it didn't seem to do--

MR. SCHUNDLER: I think the answer is we would not have been able to put together such a strong application had we not had Wireless as part of the team.

SENATOR BUONO: Bear with me just for a minute -- I'm looking over what I've--

Let's go into your chronology a little bit. You had mentioned-- In your August 11 interview, you said that you and your teammates reaction to the fateful question about the missing information -- as taken aback.

MR. SCHUNDLER: Right.

SENATOR BUONO: Was Mr. Gohl -- G-O-H-L -- taken aback? I mean, he says he knew about the error six days before the presentation. And I don't know if this is true, because it's just in the press, and it may not be accurate -- but the press accounts state that all four of your teammates were aware of the missing information prior to the interview. I don't know-- That may not be accurate, but Mr. Gohl--

MR. SCHUNDLER: I don't believe that was accurate, no.

SENATOR BUONO: Okay. You would've known that.

MR. SCHUNDLER: Dan may have been aware--

SENATOR BUONO: It wouldn't have mattered anyway, though, is what you're saying, because they couldn't have submitted the information after the--

MR. SCHUNDLER: It wouldn't have mattered, so yes -- you are correct. It would not have mattered. Dan may have been aware; I certainly was not aware, and I don't believe my other teammates were aware.

SENATOR BUONO: Okay. I was just trying to kind of reconcile his testimony at the Assembly Appropriations hearing with your testimony.

MR. SCHUNDLER: Right.

SENATOR BUONO: Then let's go to two weeks later. I'm not going to dwell on that interview very much; but two weeks later, August 24, there were e-mails that you released between Rich Bagger, yourself, and Ms. Comella asking if you provided -- I think it was in response to the press request -- if you provided the correct numbers to the Federal DOE people at

the interview. And you specifically stated that you did not provide the numbers -- that was rather unequivocal, I might add, from looking at your e-mails that you've provided to us. Do you know if Rich Bagger, the Governor's Chief of Staff, conveyed that information to the Governor at that time?

MR. SCHUNDLER: I do not, I do not.

SENATOR BUONO: Do you know if Maria Comella conveyed that to the Governor?

MR. SCHUNDLER: I do not.

SENATOR BUONO: Okay.

In addition, that later on there was a phone conversation when you conveyed this information again to Mr. Bagger and Ms. Comella. And I think you stated in your testimony that after Rich had asked all his questions, Maria ended the conversation with the words, "Well, it was a mistake then." And you testified that you interpreted that to mean that they understood your explanation of how the error occurred -- and end of story.

MR. SCHUNDLER: Right.

SENATOR BUONO: Do you think it was important that that piece of information be conveyed to the Governor by his Chief of Staff?

MR. SCHUNDLER: Yes.

SENATOR BUONO: But you don't know for a fact whether or not they did. I mean, you do eventually, you know they did, because--

MR. SCHUNDLER: I believe it was important; I don't know whether it was communicated.

SENATOR BUONO: At any time did you convey to the Chief of Staff or anyone else that the August 11 interview before the Federal DOE was taped?

MR. SCHUNDLER: No, I don't remember ever saying that to anybody.

SENATOR BUONO: The next morning -- August 25 -- you testified that you-- The Governor asked you to discuss-- Actually, he called you to strategize prior to the press conference he was having on this issue.

MR. SCHUNDLER: I think it was less to strategize and more just to confirm the details of what he planned to say.

SENATOR BUONO: Okay. What did you advise the Governor? Could you reiterate that? And who was in the room with you when you discussed the error with Mr.--

MR. SCHUNDLER: No one was in the room with me.

SENATOR BUONO: And Rich Bagger?

MR. SCHUNDLER: I believe I've read subsequently that they have said that Maria was also in the room when they were on the conference -- when they were on the speaker. But I don't remember Maria saying anything during the conversation, and I don't remember her having been there. She may have been there.

SENATOR BUONO: I guess what I'm getting at is when the Governor stated in a press account on August 28 that, "Mr. Schundler was the Administration's only source for what occurred in the Race to the Top presentation. All of the Governor's statements were based upon Mr. Schundler's account--" Do you still maintain that you repeatedly told the Governor that you did not attempt to provide the correct information

during the interview, and that any data submitted after June 1 would not be considered a part of the State's application?

MR. SCHUNDLER: Yes. I told the Governor very directly that I did not provide the missing 2008-2009 budget numbers, so he should not say that I had. I believe it was Rich Bagger at that point -- I'm not 100 percent sure; it may have been the Governor himself, but I believe it was Rich Bagger at that point -- who said, "But you did let them know that we met the requirement for points in question F-1." And I said, "Yes." And again, that is how I remembered it. And I do believe that I did.

It was after viewing the videotape that it was clear I didn't do it during the 60 minutes that are in the videotape, so I think my saying that we met the requirement had to have happened three minutes later. After the videotape ended we stood up, shook hands, and started speaking with each other in groups. And Dan's testimony at the Assembly hearing on this matter -- Dan said he remembered hearing me say, "We can get you everything you want." I think that that comment, largely, effectively, perfectly fits with what I remember saying. I remember the interviewer saying, "Do you think we gave you a fair chance to find the missing numbers?" I remember myself saying, "Yes, you did." It was a woman. So I said, "I want you to know that we do meet the spending criteria." And then I think it would have been very natural to say, "And I can get you anything you want" or "any evidence you want of that fact."

I also knew that they wouldn't accept any evidence, so it was a throw-away comment.

SENATOR BUONO: Right.

Mr. Schundler, the Governor has indicated that you lied to him, and that he fired you as a result. Mr. Schundler, did you lie or mislead the Governor?

MR. SCHUNDLER: No, I did not.

SENATOR BUONO: Okay.

I just wanted to go into a little bit -- and then I will turn it over to a colleague -- some questions about the-- You know, I read and reread the two versions of the letter -- let me get it in front of me here -- that Rich Bagger had edited. Can you talk a little bit about that? Can we go over the language? I read it, and I reread it, and I'm trying to see what the difference is in the letter that you actually submitted. I think that's on page -- what page is that; here it is. Actually I have it marked up in my first set of comments that you provided.

UNIDENTIFIED MEMBER OF COMMITTEE: Page seven.

SENATOR BUONO: Yes, I know, I have it. Thank you. I have another copy -- I have the earlier copy.

So can you tell me what you objected to specifically in the edits that Mr. Bagger made to the letter that you were planning to send to the Federal DOE Commissioner to try and apply for additional Federal education funding dollars?

MR. SCHUNDLER: Right. The last sentence -- or the last phrase in that particular sentence, in the edited sentence that came back to me from the Chief of Staff -- the words read "confirmed verbally during our August 11 presentation." Now, that phrase "confirmed verbally during our August 11 presentation" refers to the fact that New Jersey increased its spending on education as a percentage of total State revenues from 36.9

percent in 2008 to 39.6 percent in 2009. So that sentence has me specifically confirming numbers to the reviewers. And I've been emphatic about the fact that I had not given the reviewers numbers.

SENATOR BUONO: So the language is a fact that demonstrated in New Jersey's round one application and confirmed verbally during our August 11 presentation--

MR. SCHUNDLER: Correct. And that language was in the round one application, so that phrase is true. But I did not provide them the numbers verbally, so that second phrase is not true.

SENATOR BUONO: Okay. And then it was changed to state -- what?

MR. SCHUNDLER: So he made--

SENATOR BUONO: There just doesn't seem to be a lot of difference between the two, but -- okay.

MR. SCHUNDLER: So he made a further change. He said, "New Jersey increased its spending on education as a percentage of total State revenues from 36.9 percent in 2008 to 39.6 percent in 2009, a fact that was demonstrated in New Jersey's round one application." That is true.

Now it has a new sentence--

SENATOR BUONO: "In addition--"

MR. SCHUNDLER: "In addition, it was confirmed verbally during the August 11 presentation that New Jersey satisfied this criteria." And I did confirm that we satisfied that criteria. I said, "You know, we do meet this requirement."

SENATOR BUONO: So it was confirmed verbally that you met the requirement, but it wasn't confirmed verbally by providing the missing numbers.

MR. SCHUNDLER: Right. It was confirmed that we met the requirement; I did not provide the missing numbers.

SENATOR BUONO: Okay.

I'm going to talk a little bit about something that probably will glaze people's eyes over. But I wanted to talk a little bit about best practices, when it comes to applying for Federal funding and, in particular, Race to the Top. I know that other states, and in particular the state of Maryland, has a best practices to -- a specific process, a very detailed process in place, designed for applying for Race to the Top funding. They have their DOE into specific tiers for the drafting, the editing, and then the reviewing of the application. Why has our Department of Education not implemented that kind of an application process, given the kind of money that was at stake?

MR. SCHUNDLER: Well, I don't know why, in the past, if we have or have not over different periods in the past. All I know is that in our own putting together of this application, I wish now that I'd had someone whose job was simply to read the questions and make sure they were responsive, or, let's say, that the answers were responsive to the questions. And I'd wish I'd had someone designated with that job who is not part of the writing team, because I think one of the problems was that for those of us who were part of assembling the application -- you know, you read a question at one point, and you may have an idea in your head about what that question is. By the time you actually get to editing text later, you may

just presume that you remember what the question is and, in fact, you don't.

So it would have been helpful, I think, for me to have someone whose specific job was just to read the answers, see if they were responsive to the question, and have that be a person who was not at all involved in the writing -- who had no other responsibility but to do that one small thing. That would have caught this problem.

SENATOR BUONO: Do you think it would have been helpful if we, as a State, attended the workshop that every other state that applied for Race to the Top funding attended?

MR. SCHUNDLER: The bottom line is: I do not believe that we lost points because we did not attend that workshop. We were able to talk with the U.S. DOE whenever we needed to to get questions answered, and we did on a frequent basis. We also had many people who were part of workshops having to do with the Race to the Top application. So that wasn't the only workshop that was conducted on the Race to the Top application.

SENATOR BUONO: Okay. Well, thank you, Commissioner.

Senator Sarlo would like to ask you some questions.

Senator Sarlo.

SENATOR SARLO: Thank you, Senator Buono.

Good morning, Mr. Schundler, Mayor Schundler, Commissioner Schundler.

First of all, I thank you-- Again, I thank you also for being here. These are very difficult questions and put you in a very difficult light.

But I appreciate your willingness to come and to cooperate with this Committee.

Let me first begin by complimenting you on the work that you were doing at the Department of Education. You know, we met for dinner when you were first appointed by the Governor. And for full record, since we're under a subpoena here, we split the bill, we split the bill. The bill was split evenly. But we met for dinner. And I was concerned, quite frankly. I was concerned about how you would do as a Commissioner knowing your views and knowing your perspective from the days that you ran for higher office on a statewide level.

But you had assured me that your only function would be about our children -- putting our children first -- building consensus, fixing our urban schools, even if it took measures that were out of the ordinary. So you convinced me and convinced the Judiciary Committee, and you went on to become Commissioner of Education.

I was also quite impressed when there was an announcement that when the initial application had gone in, that there was a consensus with you and the NJEA -- I was quite impressed. Because I remember at Judiciary Committee, we asked you point blank on numerous occasions: were they public enemy number one? And we went back and forth on that. I, personally, was quite impressed with the work that you've done. And I'm disappointed that you are no longer in this position, because I think with your level of intelligence, your insight, your willingness, and your care for the children of New Jersey you would have done a great job.

So here we are today. This Legislature-- And it kind of baffles me that we're sitting here and certain members of the Legislature are

concerned with why we can't get answers and why we should be getting answers -- a mistake was made, we lost \$400 million, let's put it behind us. No. We've been elected -- this Legislature -- every one of us has been elected to ensure a thorough and efficient education. Funding is our responsibility. Four hundred million dollars that could have come into the State from the Federal government is our responsibility, and we should take it seriously. Because it does effect-- I know it effects me in Bergen County. We lost \$140 million in the formula, and we lost another \$40 million with regards to this application -- that's \$180 million in one year. That's devastating to public schools in Bergen County -- ask anybody: Republican, Independent, or Democrat, they will all say the same thing. So we should get answers to this, and we have an obligation. We did not elect Jim Gearhart to make policy for New Jersey. I don't really care what his opinion is on public education, but evidently, based upon some of the testimony I heard today, this Administration is concerned about what Jim Gearhart had to say. So that is troubling.

Let me go through just a couple of follow-up questions. You had indicated earlier that the NJEA's support -- initial support -- was potentially worth about 14 points.

MR. SCHUNDLER: A minimum.

SENATOR SARLO: A minimum of 14.

MR. SCHUNDLER: Right.

SENATOR SARLO: What would be the upside, upshot, potentially?

MR. SCHUNDLER: I think potentially 20. It would have had to do with-- There are some points you got directly for stakeholder support,

and there were some points you get because people believe in your ability to get reforms implemented. And with the NJEA's support, there would have been a greater belief in our ability to implement all of the elements of the plan.

SENATOR SARLO: Okay. And I think you've answered this, and I just want to make sure I'm clear on it. If the original application went in, even with the clerical error, we would have been sitting here today, not listening to you, but deciding how the \$400 million is going to be divvied up -- is that correct?

MR. SCHUNDLER: I believe that's true.

You're asking for an opinion -- I believe that's true.

SENATOR SARLO: Okay. And that's what I'm asking you for.

MR. SCHUNDLER: Right.

SENATOR SARLO: The work that was done on Memorial Day weekend to change the original application -- did you have a lot of input into that? Or was it primarily the work of the Administration?

MR. SCHUNDLER: No, the Administration was telling us what changes they wanted made, but it was my team doing a lot of that work.

SENATOR SARLO: Okay. Did you agree with every change that was being made?

MR. SCHUNDLER: I've already said that I thought it was a bad decision not to go forward with the agreement.

SENATOR SARLO: Okay. The NJEA, on May 13, 2010, this Ginger Gold Schnitzer testified before the Assembly and Senate Education

Committees in support of this application -- that was back on May 13. And then, according to a timeline that I've received from staff -- our own internal staff, Senator Kean -- there was a series of discussions, town hall meetings, and the like that take you all the way up to, literally, May 27, 2010; and where you worked with your staff, at times it looks like day-in and day-out, to secure the NJEA's final approval. Is that correct?

MR. SCHUNDLER: I think the way I would put it is that we were trying to put together the broadest support possible, so a lot of-- We worked very long hours. It wasn't just to get their support, it was also to get yours and your fellow Legislators. As you know, we had a unanimous bill passed through the Legislature endorsing the application. So there was an effort to get the broadest support possible. That included the NJEA. There are other organizations in this room today -- the Garden State Coalition of Schools, Principal and Supervisors Association--

SENATOR SARLO: Were weighing in also.

MR. SCHUNDLER: So we were working to get their support also.

SENATOR SARLO: Okay. So you had a collective-- You were building a consensus, literally, of stakeholders. And on May 27, you arrived at that consensus.

MR. SCHUNDLER: We were able to bring a very large education stakeholder who, up to that point, we'd not had on board.

SENATOR SARLO: And at that point in time it became public, and that's when the Governor learned about it. And in your statement today, he said the money was not worth it. Is that what the Governor shared with you?

MR. SCHUNDLER: Yes, but I would highlight that--

SENATOR SARLO: That is troubling to me. That the Governor of New Jersey would say \$400 million is not worth it. That is very troubling to me.

MR. SCHUNDLER: I would--

SENATOR SARLO: For somebody who is responsible for a thorough and efficient education -- one of 40 Senators.

MR. SCHUNDLER: Senator, this comes down to the point as to whether or not you believe that the concessions we made were impactful or not; and, again, I don't believe they were particularly significant concessions.

If what was being asked was something that would have limited our ability to make education reforms, then I would agree the money wasn't worth it. In this instance, I don't agree. I don't think the changes that we were asked to make were consequential.

SENATOR SARLO: You also indicated that the Governor had indicated to you that he was concerned what-- We in the North don't get to listen to 101.5. Somehow in Bergen County and Essex County we can't get 101.5 on our radio. I wish we did, I guess that's where we're going to learn more about education policies here in the State of New Jersey. But the Governor made it clear to you he was concerned that Jim Gearhart was criticizing this consensus?

MR. SCHUNDLER: Yes.

SENATOR SARLO: That is also very troubling to me, that a radio talk show host is weighing in on decisions of this Administration when it comes to our children.

In your statement you further said the Governor was emphatic that the money didn't matter to him, and you offered two other arguments to consider: that the compromises were inconsequential -- that you just said -- and that if this application was to go forward, you felt you would be able to implement 90 percent of our reform agenda?

MR. SCHUNDLER: Correct.

SENATOR SARLO: Just elaborate on that for me.

MR. SCHUNDLER: Well, there's a lot of different things that we want to do -- 90 percent of them were in the Race to the Top application. So if you think about the Opportunity Scholarship Act again: That was not in the application; it's something we believe in. But it's something that's-- It didn't belong in the application because it wasn't one of those things that the Federal government was seeking. The Federal government specifically said, "Here's a grant opportunity. If you're willing to commit to these different things, we'll give you hundreds of millions of dollars." So our application specifically speaks to the different reforms the Federal government was seeking. Not everything that we wanted to do would have been responsive to what the Federal government was seeking, so it's not in the application.

There are-- 90 percent of the things we believe have to be done in New Jersey were specifically endorsed by the Obama Administration. And the Obama Administration was specifically putting money on the table to incentivize states to implement things that we already believed in.

SENATOR SARLO: So in your opinion, the compromises, the balancing act that we all must do -- in life, every day, in government -- the balancing act that you were able to perform would have resulted in \$400

million and almost 90 percent of the reforms that both you believed in, the Governor believed in, even the Obama Administration believed in.

MR. SCHUNDLER: And again, perhaps most important of all, for the last 10 percent, we didn't actually have to give up on those 10 percent of reforms. We could have still pursued them.

SENATOR SARLO: You still could have pursued them.

So this personal animosity between the Administration and the teachers' union got in the way of this successful application.

MR. SCHUNDLER: Senator, I'm not going to tell you what the Governor's reasoning was.

SENATOR SARLO: But he did indicate to you that he was concerned about Jim Gearhart's comments on the radio.

MR. SCHUNDLER: He did.

SENATOR SARLO: Did you find in your tenure as Commissioner that the battle with the NJEA, at many times, conflicted with what you were trying to do? For instance: The Governor announced for folks to go out and defeat school budgets -- regardless -- defeat school budgets. You then came back out, subsequent to that, and felt people should not defeat school budgets. Did you find that the work you were trying to do to reform our schools constantly ran into a roadblock because of the Administration and NJEA's battle?

MR. SCHUNDLER: I think many of the reforms that we want to implement had always been opposed by the NJEA. So it was inevitable that there might be a clash there. That was actually one of the reasons I was so happy to get their endorsement for our original application, because

it did represent them agreeing to things that they had said they would never agree to in the past.

In my opinion, it represented an opportunity to take what should have been-- In may have been natural to assume that the NJEA would fight everything we were trying to do, but once they said they were willing to support 90 percent of what we wanted to do, we should have said thank you and shaken hands and gone far with it. And again, it didn't preclude us from pursuing the last 10 percent -- that's the important thing to appreciate as well.

SENATOR SARLO: You also indicated-- We just talked, and you confirmed for me that had the original application gone in, regardless of the clerical error, that in your opinion we would have been successful. You've also said that during the interview you picked up almost 34 points.

MR. SCHUNDLER: Correct.

SENATOR SARLO: If you add those 34 points, plus the original application, we would have been scored as one of the higher--

MR. SCHUNDLER: Yes, I think we would have come in fourth.

SENATOR SARLO: We would have come in fourth.

MR. SCHUNDLER: Right.

SENATOR SARLO: Okay.

There's been a lot of talk about, "Well, we lost under the Corzine Administration" on the original application, which was called-- we call (indiscernible). But going back to your application -- was much stronger than the original Corzine application. The first Corzine

application was denied. Your original application was much stronger -- correct?

MR. SCHUNDLER: Right, correct.

SENATOR SARLO: By 20 points almost -- correct?

MR. SCHUNDLER: No, by 51 points.

SENATOR SARLO: Fifty-one points.

MR. SCHUNDLER: If it had the additional points with the union being onboard, I think it would have been in the 65- to 70-point range.

SENATOR SARLO: Right. If you add in the points that the Governor forfeited with the changes, we would have been close to 65 to 70 points.

MR. SCHUNDLER: Right.

SENATOR SARLO: Okay.

When we found out about this, and it was now in the public domain that the application was denied, I read through the e-mails between Governor's Maria Comella, yourself. There are certain folks from the Attorney General's Office, it looks like, also copied on a couple of these e-mails. And you made it clear to them that you did not present or were unable to present-- Did you also present to them that it was being videotaped?

MR. SCHUNDLER: I don't think we talked about that.

SENATOR SARLO: Okay. But the e-mails are clear to me that you told them that we did not present this information.

MR. SCHUNDLER: Right.

The one thing which, again -- when asked if we said anything about it, I said -- at some point I said we met the requirement.

SENATOR SARLO: Right. In your testimony you said in the discussion with the Governor on speakerphone with Rich Bagger that the Governor was first going to make the story about these archaic rules and these rules that didn't make sense. And then he was going to say that "I gave the reviewer the missing information, even though he didn't think that was correct." Isn't that lying to the people of New Jersey?

MR. SCHUNDLER: I don't know if Rich Bagger and Maria Comella expressed to the Governor that I had not given the numbers. I would have thought they would. I made it clear to them, and I think it's important information that when briefing him they should have provided him. But I don't know that they did provide that information to him.

When he went through what he planned to say, and he said explicitly that he was going to say I provided the missing numbers, I stopped him and said, "I did not provide the missing numbers. Don't say that."

SENATOR SARLO: But you said the Governor was on the speakerphone and Rich Bagger was with him.

MR. SCHUNDLER: Right.

SENATOR SARLO: "The Governor said he was angry about the missing information in our grant application but that no one was going to lose their job over it."

MR. SCHUNDLER: Right.

SENATOR SARLO: And that he would accept responsibility for the error and then go on the offense -- "it's better to be on offense than

defense.” And then go after the Obama Administration. And he was going to try to make the story about the rules. “He was going to say that I gave the reviewers the missing information.”

MR. SCHUNDLER: Right.

SENATOR SARLO: By saying that, you are on the other side of the phone call -- he basically was admitting that he was going to not tell the truth to the press and to the public.

MR. SCHUNDLER: I don't-- He was definitely saying that he was going to say something that was not true, that's why I stopped him and said, “Don't say that.”

SENATOR SARLO: You told him. You told him, “Don't say that,” right?

MR. SCHUNDLER: Don't say that -- yes.

SENATOR SARLO: Madam Chair, do we know -- Mr. Bagger, who I've enjoyed working with, and Maria Comella I've not worked with -- do we know, do we have any testimony from or e-mails from them that they did, in fact, talk to the Governor? Can we listen to them? Can we hear what they told the Governor? Would that be possible?

SENATOR BUONO: Well, I can tell you the answer to your question is that we don't have e-mails that reveal that. The Governor's Office has exercised privilege -- numerous privileges: executive privilege, deliberative-process privilege, attorney-client privilege -- every privilege under the sun. So they succeeded in preventing us from picking and choosing what documents we have to conduct this hearing.

SENATOR SARLO: What's troubling to me is-- It's the third part that's troubling to me -- is I know how persistent you are. Whether I

agree or disagree with your philosophies, I know how persistent you are when you are trying to get a point across, in many different ways. And I know, based upon your testimony and everything I've read, that you were particularly persistent to this Governor and others who do not share that information. Why do you think they went out and did -- went about it the way they did and said, "Hey, we did provide them the information," and then were embarrassed when the video came out? Why do you think they approached it in that manner?

MR. SCHUNDLER: I think the Governor may have thought that the difference between saying that we met the requirement and providing them the actual numbers was so small, why worry about it? I think--

SENATOR SARLO: That's not being transparent, though. This is about transparency (indiscernible).

MR. SCHUNDLER: The bottom line is, I think he should have been worried about it, because I think-- And again, I didn't highlight that everything was videotaped so that if there is a small discrepancy it will become a subject of controversy. But if you're asking me, I'm thinking he probably thought it was a small difference.

SENATOR SARLO: I mean, he made it clear in this text from his -- "Commissioner Schundler gave them the '08-'09 numbers. During that interview the issue was raised and Commissioner Schundler gave them, in the interview, the numbers for '08-'09." And you made it clear on numerous occasions and in your e-mails to Maria Comella that--

MR. SCHUNDLER: I did not.

SENATOR SARLO: You did not.

MR. SCHUNDLER: Right.

SENATOR SARLO: And it would be up to Maria Comella and Rich Bagger, who are in the Governor's inner office, to ensure that he knew this, that we were not misleading the people of New Jersey -- correct?

MR. SCHUNDLER: Yes.

SENATOR SARLO: If you were the Governor, you would ensure that your press secretary and your Chief of Staff would share something before you went to the public -- correct?

MR. SCHUNDLER: Let's not opine on that subject.

SENATOR SARLO: The letter that went back and forth-- Again, now we're trying to mislead the Federal government. Your initial letter -- which we have a copy and I've read, and then I read the two edits -- why do you think at this point in time the front office was still trying to convince somebody that you gave them the numbers even after the videotape has been out now?

MR. SCHUNDLER: No, the videotape was not out yet.

SENATOR SARLO: Okay; the videotape was not out. But again, you were making it clear to Rich Bagger the letter was incorrect.

MR. SCHUNDLER: Right.

SENATOR SARLO: The letter was incorrect -- you were telling him that. And he didn't seem to care?

MR. SCHUNDLER: Well, when I expressed my objection to his rewrite, they took out the phrase that I found unacceptable.

SENATOR SARLO: Okay. With regards to the Attorney General, was the Attorney General, in every step of the way with your

department, working on this application? They ultimately signed the application, correct?

MR. SCHUNDLER: Yes. The Attorney General herself -- I don't know if the Attorney General has ever read the application -- but there were Deputy Attorney Generals who reviewed everything we said in the application for truth, because we were making a commitment to the Feds, not only that we will do these things that we say we'll do, but that the things we represented are true.

SENATOR SARLO: Was the Attorney General working hand-in-hand with Wireless also?

MR. SCHUNDLER: The Attorney General's Office-- The Deputy Attorneys General who were assigned--

SENATOR SARLO: Yes, I understand -- Deputies -- correct.

MR. SCHUNDLER: --to work with us worked hand-in-hand with all of us as part of the team, when it came to their role. Their role wasn't, if you will, to decide what the policy would be, but their role was to make sure that everything we said was true.

SENATOR SARLO: Madam Chair, is the Attorney General currently investigating Wireless? Are we aware of that? Am I--

SENATOR BUONO: Yes.

SENATOR SARLO: They currently are? Okay.

Were you already relieved of your duties at the time they called for that investigation?

MR. SCHUNDLER: I don't remember.

SENATOR SARLO: You don't remember.

MR. SCHUNDLER: No.

SENATOR SARLO: Because that's also a little bit concerning to me. If the Attorney General's Office is working hand-in-hand with Wireless, how are they doing an investigation? We know it's not a criminal investigation, but an investigation of whether or not they performed their duties. It's more like whether or not-- I'm assuming it's more like whether we should pay them or not for their duties. They didn't do anything negligent; they perhaps weren't careful enough. But I don't know if that's the right agency to be reviewing it at this point in time.

SENATOR BUONO: If I may just interject: According to your chronology, Mr. Schundler, you had said that the AG-- You referred to a fact-checking process, and that there were several DAGs, as well as the consultant, involved in that process. Did that fact-- That's what you're talking about, the fact that--

MR. SCHUNDLER: Yes.

SENATOR BUONO: Did that involve anyone reading the questions along with the answers?

MR. SCHUNDLER: That gets back to why it's so disappointing to me that first I made the error and struck out critical information. I'm disappointed that it wasn't caught by Wireless itself; and it wasn't caught, apparently, by the Attorney General's Office either. And so-- It wasn't their job to make sure the question was responsive to -- or the answer was responsive to the question.

SENATOR BUONO: Whose job was it?

MR. SCHUNDLER: It was their job to make sure that what we said was true.

SENATOR BUONO: Whose job was it?

MR. SCHUNDLER: Well, it was our job in the DOE, ultimately.

SENATOR BUONO: Was it Wireless' job?

MR. SCHUNDLER: I think it was their job also. I would say the responsibility is mine as the head of the agency. Apart from having made the error, it's mine as the head of the agency. And it's theirs because it was one of their contractual duties. I would say it was not particularly the job of the AG's office, but while they were doing the fact-checking, if they had read the question and then read the answer, they might have been able to say, "You know, by the way, you're missing some important information here."

SENATOR BUONO: Well, I think what Senator Sarlo, if I may interpret what his concern is -- that the AG was the last one to review the application for its legal accuracy. So it raises suspicions that all of a sudden the Governor's handpicked Attorney General wants to now handpick the documents that we can have to conduct a meaningful, transparent hearing. It just doesn't feel as though it's a particularly transparent process.

Okay, continue.

SENATOR SARLO: There has been a lot of discussion, both in the newspaper and some of the e-mails that we received, regarding a Mr. Alan Guenther. Did he work for you?

MR. SCHUNDLER: Alan Guenther is a communications director at the Department of Education.

SENATOR SARLO: Okay. Did you hire him? Was he hired by your--

MR. SCHUNDLER: Right.

SENATOR SARLO: Was he recommended--

MR. SCHUNDLER: He was working for the State already. We transferred him into the Department from the Public Advocate's Office.

SENATOR SARLO: He was working for the Public Advocate?

MR. SCHUNDLER: Right.

SENATOR SARLO: Was he part-- He was a new-- He joined the Christie Administration, right?

MR. SCHUNDLER: Excuse me?

SENATOR SARLO: Was he on staff before the Christie Administration?

MR. SCHUNDLER: Yes, I believe he was, in the Public Advocate's Office.

SENATOR SARLO: Public Advocate's Office.

MR. SCHUNDLER: Right.

SENATOR SARLO: And he had called you that evening when there was a radio program -- correct?

MR. SCHUNDLER: Excuse me?

SENATOR SARLO: There was a-- That he had called-- Did he call you personally about the Governor being on *Ask the Governor*, that the Governor was visibly upset?

MR. SCHUNDLER: That radio program was on the evening of the 28th. It was actually after I was fired.

SENATOR SARLO: Okay. But the Governor indicated, in that, he had met with the entire team after you returned from your

interview -- your presentation. Did that happen? Did your entire team sit with him personally?

MR. SCHUNDLER: With the Governor?

SENATOR SARLO: Yes.

MR. SCHUNDLER: No, I don't think so.

SENATOR SARLO: Did you sit with any of his top advisors: Mr. Bagger, Maria Comella?

MR. SCHUNDLER: I had spoken with Rich some already by phone on the way back from Washington. There was a chance I had to debrief Rich-- The meeting was actually on a separate subject, but while there I also had a chance to brief Rich some on how the presentation went. And I believe the other staff were some people from the Counsel's office and some people from the Policy office. But the Governor was not there.

SENATOR SARLO: Okay. Final question, Mr. Schundler -- actually two questions: With regards to the Governor's personal concern that it looked like he was caving in to the NJEA, he made it clear to you he did not want to be seen as caving in to the NJEA. Did you and your staff and everybody around you do everything you could to convince him that this was not about him and his personal war with the NJEA, but this was about education funding for our children of New Jersey? Do you feel you've done everything you possibly could as the chief of the schools in New Jersey to convince him that he needed to put his personal war with the NJEA on the sideline and do what was right for our children? Do you feel now, looking back, that you've done everything you possibly could to convince him?

MR. SCHUNDLER: I think the best argument I could make was to highlight that we were not caving in, that, in fact, the NJEA was agreeing to almost everything we'd asked for. And on those items that they were not willing to endorse, we were not precluded in any way, shape, or form from going forward. We just would not put them in the application for the grant money from the Feds.

So I believe that was the best argument to make to the Governor, and I believe I made that very well to the Governor. And I made that both orally on the phone, when speaking to him; I also wrote that in an e-mail to him. I think that was the best argument, I think it was directly made, I think the Governor understood it. He ultimately wasn't persuaded by it.

SENATOR SARLO: I had hoped you were-- I think we all here would have wished you were successful in persuading him. It's unfortunate.

And then the final question is: When you heard about the press conference -- I know you had indicated you had a meeting with Assemblyman Diegnan -- when you heard about the press conference, were you extremely troubled about whether we had misled the public on what really went wrong here?

MR. SCHUNDLER: I was-- I guess the best way to say it was that I thought (a) we have a problem now because the Governor said something that's not true, and (b) it's going to become a problem that's very public; because I knew that the Q and A had been videotaped and the Governor was very direct saying that I had provided the numbers, and I knew very directly that I had not provided the numbers, and it would

become-- Rather than the discussion being about picayune rules, it would be about the Governor's misstatement.

I will add that I learned of that while I was putting together the letter for Secretary Duncan. So it was the kind of thing where I knew we were going to have a problem, and were going to have to address that problem. Within a day, I was fired, so it wasn't much of an opportunity to do much there.

SENATOR SARLO: Thank you, Mr. Schundler.

SENATOR BUONO: Before I turn it over to Senator Kean, I wanted to-- Just two quick things: David Stevenson, VP at Wireless -- you spoke to him late Sunday night -- Sunday, May 30 -- to discuss the Race to the Top final application. What was the substance of that?

MR. SCHUNDLER: I'd have to look at my e-mails. I don't remember off the top of my head.

SENATOR BUONO: Okay -- May 30 at 10:32 p.m.

MR. SCHUNDLER: Right.

SENATOR BUONO: You have no recollection?

MR. SCHUNDLER: Not without-- I mean, I wouldn't be surprised if I looked in my e-mails, if I could see something which would tell me what I was talking about; but I don't remember off the top of my head.

SENATOR BUONO: Okay. Well, before I turn it over to Senator Kean, I have to say there's so much, as I said, drama today and frenzy around this room. But the fact is what you've painted-- The portrait that you have painted today of a Governor -- under oath, painted a portrait of a Governor who has sacrificed \$400 million that we needed for education

reforms for our children to further a personal vendetta against the NJEA, and that is just astounding to me.

MR. SCHUNDLER: Again, I don't know that it was about a personal vendetta. The only thing I can say is that I think it was a bad decision.

SENATOR BUONO: Blinded by his adversarial relationship then -- perhaps we could say that.

MR. SCHUNDLER: Well, I think again, the Governor-- He may feel that it was the right policy and he wanted it in the application, and we shouldn't compromise on having the right policy. I agree it was the right policy. Again, I believe it was a bad decision, because we weren't precluded from pursuing that policy change we believed in.

SENATOR BUONO: All right, but the point is that this is the kind of one-upmanship where the Governor is trying to score political points with the media by not having it appear as though he caved to the NJEA, who are not terribly popular. That's the kind of thing that you don't want driving public policy. That's not what you want driving public policy -- which is not the U.S. Attorney's Office, it's not about who wins and loses; it's about coming together, forging a compromise -- which you did, which was a Herculean task and I have to again commend you on the record for that -- and to do what's best, really, for the people of New Jersey. That's why people are so cynical about government.

Thank you.

Senator Kean.

SENATOR KEAN: Thank you, Madam Chair. I appreciate the opportunity to speak.

To begin: I think your characterization is not the statement that Commissioner Schundler made at all. He outright refuted that characterization a moment or two before, and throughout the course of these hearings it's deeply troubling today to be hearing members of this Committee impugn the integrity both of the Governor as well as the Attorney General who is yes, appointed by the Governor but confirmed by this legislative body. And over the course of a variety of Senators' testimonies or statements today -- not testimonies -- that's quite troubling.

SENATOR BUONO: I agree with you, quite frankly, about the Attorney General. And I think it's 43 of our states have an elected Attorney General, and I think that that might not be a bad route for New Jersey to take. Because an Attorney General who is appointed by the Governor and answers only to the Governor is not acting necessarily on behalf of the all the people. The Attorney General's not just the Governor's attorney -- it's the people's attorney.

SENATOR KEAN: And so, if I may, we were having a policy conversation here today--

SENATOR BUONO: Well, you brought it up.

SENATOR KEAN: --as to whether or not -- so therefore you're saying you don't trust an appointed and confirmed Attorney General, which is a very broad statement.

SENATOR BUONO: Senator Kean, this isn't about a debate between us, but if you want to make it that, it's certainly going to undermine getting at the truth.

SENATOR KEAN: I am saying that the attempts to undermine the--

SENATOR BUONO: So why don't you begin with your questions of the witness. I think that would probably be best.

SENATOR KEAN: I do as well, Madam Chair,

SENATOR BUONO: Okay. Well then, proceed.

SENATOR KEAN: The question is regarding both the mischaracterization of the Commissioner's statements, as well as the integrity of the Attorney General of the State of New Jersey -- is not a great way to start out a morning.

The question here, today, is a question about an application to which no new information has been derived today. I mean, it's very clear and I--

SENATOR BUONO: Well, I disagree.

SENATOR SARLO: I disagree.

SENATOR KEAN: --and I commend Schundler--

SENATOR BUONO: And I--

SENATOR SARLO: I'm sorry.

SENATOR BUONO: What's going on here is the stuff of press releases after the Committee. This Committee is going to be run the way I say it's run. And the way I say it's run is that we ask questions of the witnesses. We can comment on them, but not just to extemporaneously make a remark that gets us off-track. And that does not serve the purpose for which we are here.

SENATOR KEAN: I agree, which is why I started my question, Madam Chair.

SENATOR BUONO: Okay, great. Well then, proceed.

Senator Kean.

SENATOR KEAN: The question, as I said, was no new information was brought forth in this conversation.

SENATOR BUONO: Well, I disagree and I think--

SENATOR KEAN: And I commend Commissioner Schundler for his service to the citizens of Jersey City, as well as his service to the people of this state, as Commissioner but also as an individual who is an extraordinary ideas generator. And your conversations and your -- on education reform have been very significant. And I want to thank you for your thought and leadership on some of those areas.

The question that I have today is: It's been very clear, under testimony, that the Commissioner admitted that there was a mistake that was made. The main mistake, here presented, was the fact that within the Department of Education there was not a second set of eyes who had not read the -- it had not been part of the application process. As the individual tasked with carrying the ball in this regard, the Commissioner has made very clear, if I may ask (*sic*), that the responsibility lay within your team. The mistake as to whether to change that application -- that one line item -- was made within the Department of Education.

MR. SCHUNDLER: Right.

SENATOR KEAN: If that change had not occurred, if there was a second set of eyes -- which seems to be the one recommendation that you would make to this Committee, is a second set of eyes within the Department of Education to review this Committee -- to review this proposal, the State would have received funding.

MR. SCHUNDLER: Correct.

SENATOR BUONO: If I may interject, Senator Kean.

I don't like your characterization either. I think that your characterization, that there is no new information and that this is about a factual error, is not accurate. This is no longer just about a mid-level clerical error, so to speak. This is about an error in judgment, and that is the information that has come to light today. And that is the information that Mr. Schundler has testified to before this Committee. So I just need to state that, for the record, that I disagree with you.

SENATOR KEAN: If I may.

SENATOR BUONO: Sure.

SENATOR KEAN: Individual's judgments, and how individuals apply their principles to judgments and judgment calls, are decisions that we, as citizens, we as human beings, we as Legislators, make every day. The question that was asked and answered here was would we have received-- Would we have achieved enough points to get this application if that one error that had been made within the Department of Education had not been changed? The answer is yes.

SENATOR BUONO: But I also will say that our judgment-- We all make judgments here, but we also take an oath that our judgments are not motivated by petty, personal vendettas or arguments with people. I mean, that happens all the time. We should be motivated, and that's the oath that we take: to do what's best in the interest of New Jersey and the people we represent. And so I take issue with your characterization.

SENATOR KEAN: Madam Chair, the Commissioner has testified--

SENATOR SARLO: If I may, Senator Buono.

SENATOR BUONO: Yes, go ahead.

SENATOR KEAN: The Commissioner has testified that the Governor was not driven by those--

SENATOR BUONO: (raps gavel) Senator Sarlo would like to respond.

SENATOR SARLO: What is troubling in what I learned today, which is completely all new information, is that we had an application that would have passed even with the clerical error. And we decided to shelve it because of personal vendettas between the Administration-- And that decision--

SENATOR KEAN: That was not the testimony at all. With all due respect, Senator, that was not the testimony.

SENATOR BUONO: Let's try and do it through the Chair, is that okay?

SENATOR SARLO: That decision -- through the Chair -- that decision was made by the Administration on education funding which impacts us as Legislators. So we should be in this--

SENATOR BUONO: Through the Chair.

SENATOR SARLO: We should be concerned. We are the ones who are ultimately responsible--

SENATOR KEAN: If I may reclaim my time, Madam Chair?

SENATOR BUONO: Through the Chair.

SENATOR SARLO: --for funding of education. That's what I learned today. That a personal vendetta and personal animosity towards the NJEA got in the way of an application that would have been successful.

SENATOR KEAN: That's a complete distortion.

SENATOR SARLO: That's taking \$400 million--

SENATOR BUONO: Through the Chair, through the Chair.

SENATOR KEAN: If I may

SENATOR BUONO: I'm going to cut this off in a minute.

SENATOR SARLO: You didn't listen to what he said.

SENATOR KEAN: If I may, the Commissioner actually contradicts--

SENATOR SARLO: You didn't listen to what he said.

SENATOR BUONO: Shhhh.

SENATOR SARLO: I'm sorry, I'm sorry. I'm out of order.

SENATOR KEAN: These are very serious issues that we are discussing today. And the implications of individuals under subpoena as well as comments made herein have very serious consequences. The question here today is, first and foremost, an individual, the Administration decides to make an application to grants. There are grants that we've won, and there are grants that we have lost over the course of history. The question here is, number one, if we'd had those additional five points there is a fact-based statement -- through the Chair -- that says we would have received the funding from the Federal DOE. Our application would have passed muster. That's a fact.

MR. SCHUNDLER: Correct.

SENATOR KEAN: The second fact is that the Commissioner stated and rebutted directly, just in the last few moments, that he does not believe that a personal vendetta dictated the Governor's actions. That is an assertion by others. The question here, from how the Commissioner and how any individual conducts their private and public lives, is how they apply their principles to the application or to their cast of votes. Right now

we are trying-- What the Governor -- through this testimony -- the Governor and the Commissioner had the exact same goals in mind, which was to try to win the application; but while doing that, not to violate certain principles that they both hold dear.

Now, as we went through the early part of this testimony, it was clear that in letters that were sent to the Department of Education, there was a compromise reached on language, there was a factual letter that was sent to the Federal Department of Education over the Commissioner's signature. They agreed on that.

The second issue that we have to focus on, I believe, is that the Commissioner had a different point of view. Is it your testimony today that the New Jersey Education Association supports merit pay?

MR. SCHUNDLER: My testimony is that they do not support it.

SENATOR KEAN: Okay, but that was part of what they-- I thought that you guys -- excuse me, through the Chair -- I thought you had come to common ground on the issue on merit pay.

MR. SCHUNDLER: They were willing to endorse the application that included merit pay de facto. They didn't want the words *merit pay* in the document, and I was willing to drop them from the document and substitute the word *bonus*.

To say that they support it is not the same as saying they were willing to support the application that included it. I think this highlights that we were ultimately able to get them to agree to endorse an application, even though it included many elements that they had said they would never support.

SENATOR KEAN: The Trenton Education Association came out and refused a \$4 million grant from the Obama Administration when -- over and above their contracted amounts -- because there would have been a merit-based decision-making process.

MR. SCHUNDLER: Right.

SENATOR KEAN: Is that an accurate statement?

MR. SCHUNDLER: I didn't read that story, but the bottom line is, I think the NJEA would be very emphatic that they do not support merit pay.

SENATOR KEAN: That's why I clarified it, because--

MR. SCHUNDLER: That's one of the reasons why we took the words out of the document.

SENATOR KEAN: Okay.

MR. SCHUNDLER: Although, again, the bonuses were still in the document. I mean, it's a different name.

SENATOR KEAN: So if I may-- Where is the common ground? Through the Chair.

MR. SCHUNDLER: I think the NJEA ultimately was willing to support an application, even though they opposed many of the things that were in it. And I think it was because they didn't want to be perceived as being against New Jersey receiving the money. And I think they didn't want to be perceived as being opposed to all reform.

And Senator, the most fundamental, let's say, reform in the Race to the Top application has to do with effectiveness being -- let's say student learning being used as a yardstick for measuring teacher effectiveness. They are opposed to that. In our discussions with them, and

we actually had good discussions of whether or not student learning can be used fairly as a measure of teacher effectiveness, they would make arguments that I had difficulty conceiving that even they believed. And at the end of the day, I think when they endorsed the package, I think it was because they know if it's done right, student learning can be used as a fair yardstick of teacher effectiveness.

So there were things that they were opposed -- they may feel that they had an interest in being opposed. But there were things I think they knew -- reforms that they knew were actually fair reforms. And so I think they came to endorse the application even though they had said they would never support some of the elements that they ultimately agreed to endorse. And I thought that that represented a real victory.

But I wouldn't say that they will ever go publicly and say that they support all these things.

SENATOR KEAN: But they supported the application.

MR. SCHUNDLER: Yes.

SENATOR KEAN: They signed on whether your phrase was *bonuses* or--

MR. SCHUNDLER: Right; that's right.

SENATOR KEAN: Not merit pay -- they signed on to that principle.

MR. SCHUNDLER: That's right.

SENATOR KEAN: Even though they oppose it.

The question that I have some concern -- the process -- is at one point there was information pulled back on the issue of seniority, reduction in force, those areas.

MR. SCHUNDLER: Right.

SENATOR KEAN: And you pulled that out of the application.

MR. SCHUNDLER: Correct.

SENATOR KEAN: To bring individuals to the table. The question that I've got then: With all due respect, how does the Administration pull -- or the Department of Education -- pull that back and then say we are also going to advocate for that in legislation? Wouldn't that be potentially unfair to the people who are at the table?

MR. SCHUNDLER: I don't think so, Senator. I think-- Again, I think to the Governor's credit, and to the President's credit -- and I think, frankly, to my credit -- I think we built up a lot of pressure on the teachers' union here in the state to get onboard with the application. And I think that things like changing the language where you get rid of the words *merit pay*, but you keep the bonuses in there -- I think that represented a desire on their part not to be seen as being intransigently opposed to important education reforms that would benefit children.

They didn't necessarily want to support these reforms, but I think they felt they were in a spot where it just wasn't acceptable to be seen as opposed to all these reforms. And so, in effect, they were looking for face-saving opportunities, I believe. So taking the words out so they don't have to go to their members and say, "Endorse this application which includes things which we've always told you are bad." By taking the words out -- it's a way of dealing with that problem.

I really saw this application as a victory for the things that we had always been fighting for. I don't believe it would have represented bad

faith on our part to continue to push for some of the things we took out of the application.

SENATOR KEAN: One of my frustrations as a legislator is that there was a lot of common ground reached during that process. And -- through the Chair -- I was one of the first people to ask why the Corzine Administration didn't apply and put efforts into the first application which would have set us to be in a better spot for the second application. So I've been trying to monitor this for and be involved in this process in an oversight capacity for awhile.

So when you, during the course of the transition, the Corzine Administration did not-- They simply said they were backing away from the application for the first one. Why?

MR. SCHUNDLER: Are you saying why did the teachers' union back away from the Corzine application?

SENATOR KEAN: Why didn't the Corzine Administration-- I mean, other states-- We had testimony here where other states-- There were questions here where other states (indiscernible) to apply. And my frustration is, there is a lot of common ground that was reached.

MR. SCHUNDLER: Right.

SENATOR KEAN: We were spending a lot of time asking and answering a question about an application where there was not a second set of eyes that looked at the document in full. That seems to be the full extent of this hearing. And instead of moving forward and saying, "Okay, let's move forward on the common ground," because we want to get to outcomes, we want to get to student performance, we want to have the best public education system not only in the country, but in the world-- And

there's a lot of common ground that was reached and that seems to be now stagnated.

MR. SCHUNDLER: Senator, I do want to support what you're saying. I believe-- What we had in that application, again, were things that were specifically sought by the Obama Administration.

SENATOR KEAN: The final application.

MR. SCHUNDLER: Yes.

SENATOR KEAN: The one that was submitted.

MR. SCHUNDLER: Yes; in fact, in both.

Even what the NJEA was unwilling to accept -- the seniority changes -- that was something being supported by the Obama Administration. So everything that we had in the original NJEA--

SENATOR KEAN: Do we gain points for having that in the application?

MR. SCHUNDLER: Yes, and I think the points would have been somewhere in the vicinity of maybe zero to three. So I think by taking that out, I think it's possible that we could have lost a few points. But I think we would have only lost a few points. I think its also possible we wouldn't have lost any points.

The Obama Administration wanted teacher effectiveness to be an element in retention decisions. And, again, the reforms that the NJEA ultimately agreed to and that are in the application -- both what they agreed to and that were also in the application that we ultimately submitted, that this legislature unanimously endorsed -- it includes using student learning as a key yardstick in the measurement of teacher effectiveness. And it does

permit public schools to remove educators who are demonstrably ineffective.

This application that we submitted highlights the value that children should be more important than special interest groups; and that if a teacher is not effective, it's not justifiable to keep them in the classroom and allow children to be disserved because that's what an interest group wants.

So that-- Because we-- I think we would have gotten most all of the points for having effectiveness as part of the retention decision. It's conceivable we might have lost a few points because we kept seniority as the decisive factor when you have reductions in force. So I could see the possibility that we might have lost, say, maybe three points. But I also see the possibility we wouldn't have lost any.

SENATOR KEAN: In addition to a second set of eyes within the Administration -- or within the Department of Education, because this was a Department of Education-handled packet of information. Information was relayed by you, through you, to the Federal Department of Education; back to you. Within the Department of Education, what other reforms besides having a second set of eyes would you recommend?

MR. SCHUNDLER: I think much of what we did in terms of the process was actually very good. I think this, ultimately, became a procedural problem that cost us and cost us dearly. I think one other thing--

SENATOR KEAN: Procedural problem meaning--

MR. SCHUNDLER: That we didn't have a second set of eyes--

SENATOR KEAN: Second set of eyes.

MR. SCHUNDLER: --to make sure that those of us who were doing the writing and the editing were making sure that the responses stayed connected with the questions being asked.

I think one of the other things I've said publicly is that I do believe it's the Governor's right to make these decisions. And though I disagreed with it being a good decision, I acknowledge the Governor's right to make the decision. And I also agree with the Governor that, again -- with the policy that he sought to have us keep in the application that the seniority statutes would be amended. And again, I believe we could have pursued that policy anyway, so I think it was a bad decision to change the application. I think that put those funds at risk, and I think, in effect, it will make it harder to implement all the reforms that were part of the application.

But while I disagree with the decision, and whether it was a good decision, I respect it's the Governor's right to make that decision.

SENATOR KEAN: And then you base it on principle?

MR. SCHUNDLER: I'm not going to opine on what was the basis. I think it's perfectly legitimate for the Governor to say that he made it on principle, and I'm not going to suggest that he didn't.

SENATOR KEAN: Prior to this morning, with whom have you met to discuss your testimony?

MR. SCHUNDLER: Well, this-- the vast majority of that testimony has been in the public domain for quite some time.

Senator Buono's office asked me to also address the original application and the NJEA agreement, and so I added those sections into the text.

SENATOR KEAN: Have you met with any members of the Committee before today?

MR. SCHUNDLER: Only Senator Buono. I believe it was only Senator Buono.

SENATOR KEAN: And, if I may through the Chair, what did you discuss?

MR. SCHUNDLER: She went through the testimony, just as she did today, I think for the general public. And most of the questions she asked today were the same questions she asked.

SENATOR KEAN: And when was this?

MR. SCHUNDLER: Probably--

SENATOR BUONO: I don't remember. I don't know why that's relevant. Just so you know, I always interview people who come before my Committee before they come before my Committee. That's my practice, and I think it's a good one.

SENATOR KEAN: You don't remember when you met with the Commissioner of Education?

SENATOR BUONO: I don't remember, no.

MR. SCHUNDLER: I think it would have probably been about two weeks ago.

SENATOR BUONO: I think so, yes. But I'm not sure.

SENATOR KEAN: Were there any lawyers present at this meeting?

MR. SCHUNDLER: No, I don't think so. Are you a lawyer?
(addressing Senator Buono)

SENATOR BUONO: No, there were no lawyers.

Okay, let me ask you this, Senator Kean: Should there have been?

SENATOR KEAN: That's-- I am asking a fact-based statement, Madam Chair, just for the record.

Thank you, Madam Chair.

Thank you, Commissioner.

SENATOR BUONO: Thank you, Senator Kean.

Senator Ruiz, and then Senator Cunningham.

SENATOR RUIZ: Thank you, Madam Chair.

Thank you, Commissioner -- good afternoon, since it's already late in the afternoon -- for spending your day with us in going over a whole summary as to-- I think everyone, in different ways, has had an opportunity to state up here how they have felt individually. Some have expressed to say that no, it's not fact. Others have said they're just making overall globalizations as to how the argument is being couched.

What I can speak to today is of my individual self, so I hope that no one interjects in the process to say how I'm thinking about this.

I do recall this whole application process because you and I had conversations Monday, Tuesday, Wednesday, Thursday, Friday before that weekend, particularly to the component of the legislative support. How much did-- Madam Chair, through you, I only have one question before I finish my statement. How much did the legislative support impact the application?

MR. SCHUNDLER: I think it was helpful. It's hard for me to quantify it in points, because I haven't thought of it. I think it would be possible to do an analysis and try to come up with a number. I think it

was-- When we talk about the 34 points that we picked up in the verbal presentation, I think part of the reason we were able to pick up so many points was we were able to persuade the reviewers that we would be able to implement most of these reforms even without the NJEA's endorsement.

SENATOR RUIZ: Right, because I remember that leadership was grappling with the initial resolution that you had presented that really would have stripped away the legislative process in doing some of those things that were laid out in the first application. And that the support letter went in supporting the actual application with precisely what you just said: That during the interview, there was a commitment that things would get vetted and we would move on with this public education reform.

You're shaking your head, but--

MR. SCHUNDLER: Yes.

SENATOR RUIZ: Okay.

I only bring that up because I remember there was a lot of back-and-forth up until that day. Things were changing; I mean, it was dynamic through, from what I recall, Friday evening, late. What I did learn today was that in rereading your testimony -- which I read probably about a month ago or so when parts of it were made public -- it was couched differently in a way. That the mistake that was initially alluded to, an information piece that wasn't supplied for a specific year -- that you echoed time and time again during the course of your testimony that it was inappropriately filed because there wasn't an extra set of eyes, that there wasn't a fact-checking basis-- You're shaking your head yes, but I guess I should -- since it was stated earlier, Madam Chair, through you, that you should respond verbally.

MR. SCHUNDLER: You haven't asked a question yet.

SENATOR RUIZ: Okay. I just thought maybe you'd want to chime in and you agreed.

But that it was because of a lack of an extra set of eyes -- that it was this mistake. I want to bring just all of this together to say that, at any point in time that we look at this application and we want to find three additional points that would take us to the \$400 million, I'm sure that we would find it in any part of the application. If I had an opportunity to go through it all now, perhaps I could sit here and say that it was the legislative process not being strong enough, that we didn't support it in a specific way, that caused the three points.

MR. SCHUNDLER: I think that's true. There are different ways we could have made up that three points.

SENATOR RUIZ: Right, so nothing new today -- maybe to different people in different ways that it was expressed -- a mistake was made. What was new today was that we talked about best practices, Madam Chair -- that you brought that up. And that those are things that we should be talking about. What was new today is that we recognized that a mistake was made. And whether you agree or disagree, whether you think it was couched in a different way because of personal opinion is irrelevant today; to say that we have a public education reform agenda that we have to tackle collectively, and that all of this right now detracts us from that mission and that agenda.

But most importantly, that if colleagues started with his opening statements earlier -- that this is important because it is about the children of the State of New Jersey. And I will say that there is not one

member, including Senator Kyrillos -- who would have had the opportunity to sit here today if he wasn't on vacation -- that would say that they're not committed to the children of the State of New Jersey and to progressively moving public education ahead.

What is couched in cynicism -- because I think that that's what he said -- or frustration from the public is precisely what is occurring today, is that we take an opportunity, just rehash things over and over and over again, not coming up with a solution that moves public education forward, not coming up with the solution that brings back the \$400 million, not coming up with a solution that will ensure that we will move our public schools in the way that will close the achievement gap, that New Jersey will not be a tale of two cities, and that our students are learning in environments of excellence. That is what's not being discussed; that is what should be discussed.

That, in fact, what we're doing today is detracting from ourselves, and it is unfortunate that I was part of that process. The last week, when I had an opportunity to, perhaps, step away and say, "What is it, exactly, that we are going to be conducting today?" that I didn't take an opportunity to realize to say, "What did we learn new today?" Yes, we need to do better -- that when we are applying, there should be extra eyes, that we should have best practices in place.

But most importantly to me is that we have to move a public education agenda forward. Everyone is not going to agree on it. You talk about this consensus agenda that was formed that the Legislature never really had time to vet. Because I certainly, at that moment in time, couldn't

have said, or signed to something that said, "I agree with this component, I agree with that tenant, I agree with that statement."

What I did agree with was that we have to change the way that we do things here now; that we were putting in, together, an application -- an application that was short three points. An application that if we go through it, line by line, page by page, I'm sure that we can pick up a point in different places. An application that initially -- and still suggested today that it was a page of inaccurate information that for whatever reason wasn't checked to say "was it 2008, was it 2009," which is filed in that place. That during the video presentation, New Jersey was not afforded the opportunity to give the accurate information -- because I called. It would not have mattered if we had had the accurate information then. It would not have contributed to the actual application itself. So it wouldn't have made a difference. He said to me it was too late; it was wrong in the application.

MR. SCHUNDLER: That's correct.

SENATOR RUIZ: So all the other kind of nuances that are occurring here today -- respectfully, through the Chair -- I understand that bring to light, perhaps, something that's greater. But something that I certainly-- When we talk about frustration in government and cynicism, that's precisely what gets me frustrated as well.

We need to change the topic of conversation. In our Education Committee, which you came before us -- and I want to say thank you for the time that you devoted to that -- there has been numerous occasions where we have had opportunities to discuss different things. It's not about just sitting there for an hour-and-a-half and just reiterating the same thing. Change the dynamic of the conversation, and where are we going to go

today. The money is not here, and it's not coming back vis-à-vis this hearing.

MR. SCHUNDLER: In the actual-- I guess, aside from the written testimony I was asked to provide, in the actual statement I will close with today, I will say precisely that, Senator.

I think the most important thing that we can do-- The money's lost. The most important thing we can do is implement the reforms that we were seeking the money to implement.

SENATOR RUIZ: Through the Chair, I whole-heartedly agree with you, and I am committed to doing that. Because there are a lot of tenants of that public education reform that will not require money, but are going to require work. There are some measures that will, and then it will be the responsibility of the legislators and the Administration and the Department of Education to ensure that we fulfill that.

SENATOR BUONO: Thank you, Senator.

Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Madam Chair.

Commissioner, or since you're from Jersey City, we'll just say Bret.

Bret, I do want to thank you for being here all day long. I did have some questions, but you have been questioned out. I think that everything that needed to be asked has actually been asked.

You know, one of the things that I wanted to make clear, and Senator Ruiz touched on it: I don't think that there is anyone here who is not concerned about education for our children. Jersey City, as you know,

we're going through many changes and always looking for ways to make changes to better educate our kids.

I think the one thing that has come out of this process for me is that there was a mistake made, and many people were involved. Many people were involved because we did not have -- as Senator Ruiz touched on it and Senator Buono brought it up -- a process which we could use that would address filling out an application or completing an application of this size. So if there's anything that came out of it is that we do need to look down the road to establishing a best practice that will enable whoever takes your place permanently, or whoever is involved in making these things happen. The frustration comes from the fact that we're talking about a loss of \$400 million at a time when our school system needs it the most; a loss of \$400 million at a time when our kids need it the most.

But it has happened. And now we do have to look forward to making sure that this does not occur again.

I think I am probably more troubled by the attitude that we, as Senators, have treated each other in the process today. We act as though we're each others' enemies because we disagree on this process, or we may have a difference of opinion about it or the necessity of it. The important thing is that we're elected officials, and we're all here for one reason only: and that is to serve the people of this State and to do it the best way that we know how. We might differ on how we do it, but it has nothing to do with the lack of respect and a lack of concern that we have.

Bret, you did your job with the same respect and concern that you did in your previous experience, that I know of. So I thank you for that, and I am, in some ways, sorry that you witnessed some of this today.

But it has happened, and we're all going to move forward to provide the best education possible for our children.

And I am sure, knowing you, that you might not be the Commissioner, but you will still be around. Because I do know that education is your passion. And, certainly in Jersey City, I look forward to seeing you as you pursue your next step.

Thank you.

MR. SCHUNDLER: Thank you.

SENATOR BUONO: Thank you, Senator Cunningham.

Mr. Schundler, did you-- You said you that you wanted to say something in closing?

MR. SCHUNDLER: I largely said it, but it's brief.

I made an editing error that contributed to New Jersey not winning a Federal education grant. And I'm hoping legislators don't use my error as an excuse to let education reform in New Jersey die. That would keep some special interests happy, but it would hurt our children far more than the loss of grant money.

The education reforms we proposed in the Race to the Top application are utterly nonpartisan. President Obama supports them, Governor Christie supports them, education scholars on the left and right support them, and parents support them.

I hope Democrats and Republicans in the Legislature can come together and work to pass the critical education reforms in our New Jersey Race to the Top application. After all, it was that set of reforms which President Obama's grant money was intended to encourage in the first place.

We have an opportunity to increase the learning and life opportunities of every child in New Jersey. We need to put politics aside and do the right thing for them.

SENATOR BUONO: Thank you very much.

And this Committee is in recess for 30 minutes.

(RECESS)

AFTER RECESS:

SENATOR BUONO: The Senate Legislative Oversight Committee is now reconvening for the purpose of recognizing the appearance of Assistant Commissioner Rochelle Hendricks, who has, through the Administration, declined to produce any additional documents, asserting various privileges. And this is something we will take under advisement and determine what action will be taken to enforce the subpoena.

I also would like to recognize the CEO of Wireless, Mr. Burton, who-- I want to thank him for complying with the subpoena, but what we are about to do-- I'm about to adjourn. I want to inform Mr. Burton that, indeed, he is still subject to the subpoena. The subpoena is ongoing and in full force, in effect. And we will not be issuing another subpoena. So we will notify him when we schedule the follow-up hearing to this one.

I've been advised by my legal counsel that I should also put on the record that everyone is still obligated who has been subpoenaed -- is still under subpoena and obligated to comply with it.

And with that, this meeting is adjourned.
Thank you all.

(MEETING CONCLUDED)

APPENDIX

**Statement of Bret Schundler
October 7, 2010**

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