

PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

on

Nomination of Fred G. Burke as Commissioner of Education

Held:
March 29, 1979
State Museum Auditorium
Trenton, New Jersey

COMMITTEE MEMBERS PRESENT:

Senator Martin L. Greenberg (Chairman)
Senator William V. Musto (Vice Chairman)
Senator William J. Hamilton, Jr.
Senator Walter N. Sheil
Senator S. Thomas Gagliano
Senator Barry T. Parker
Senator James P. Vreeland, Jr.

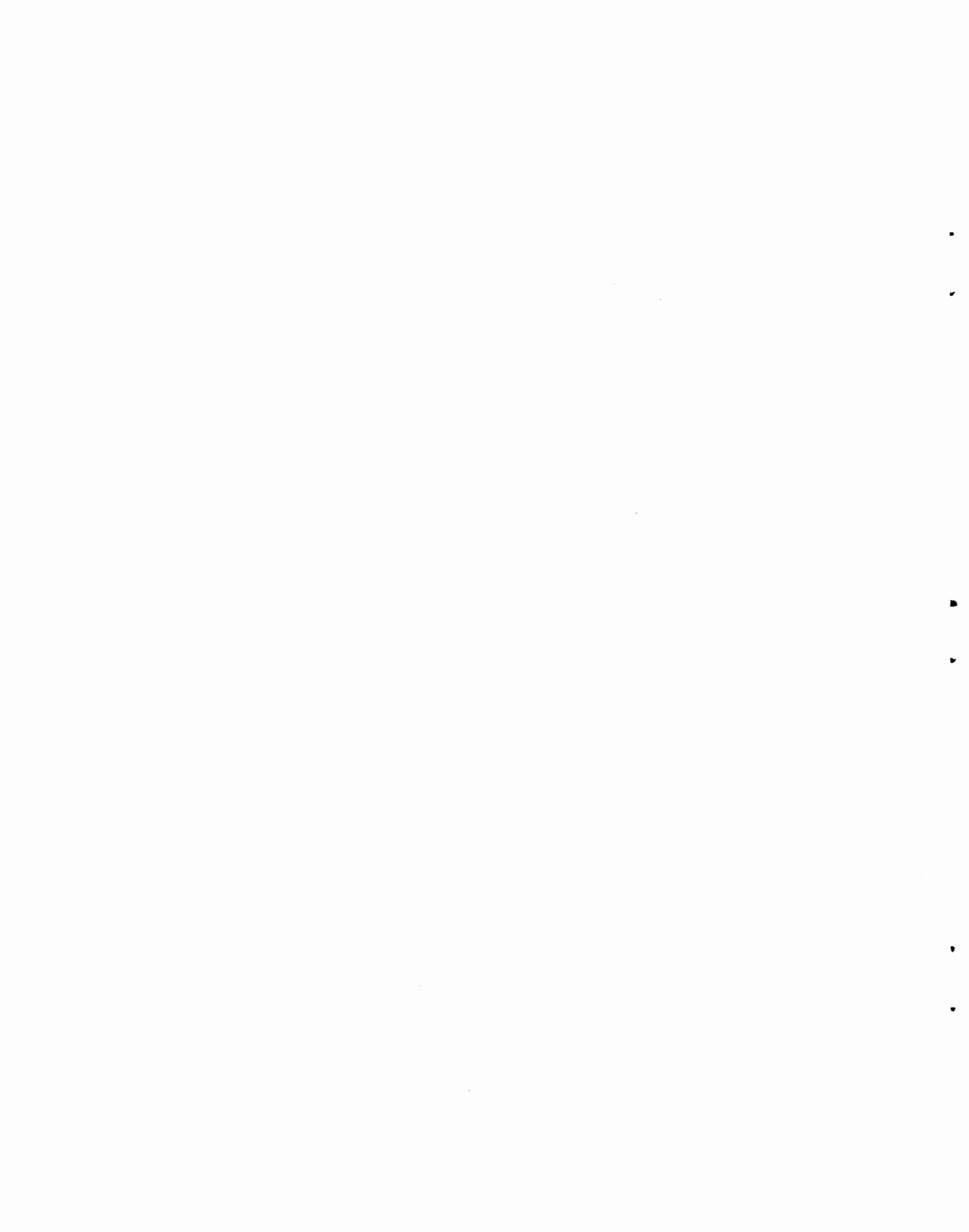
ALSO:

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

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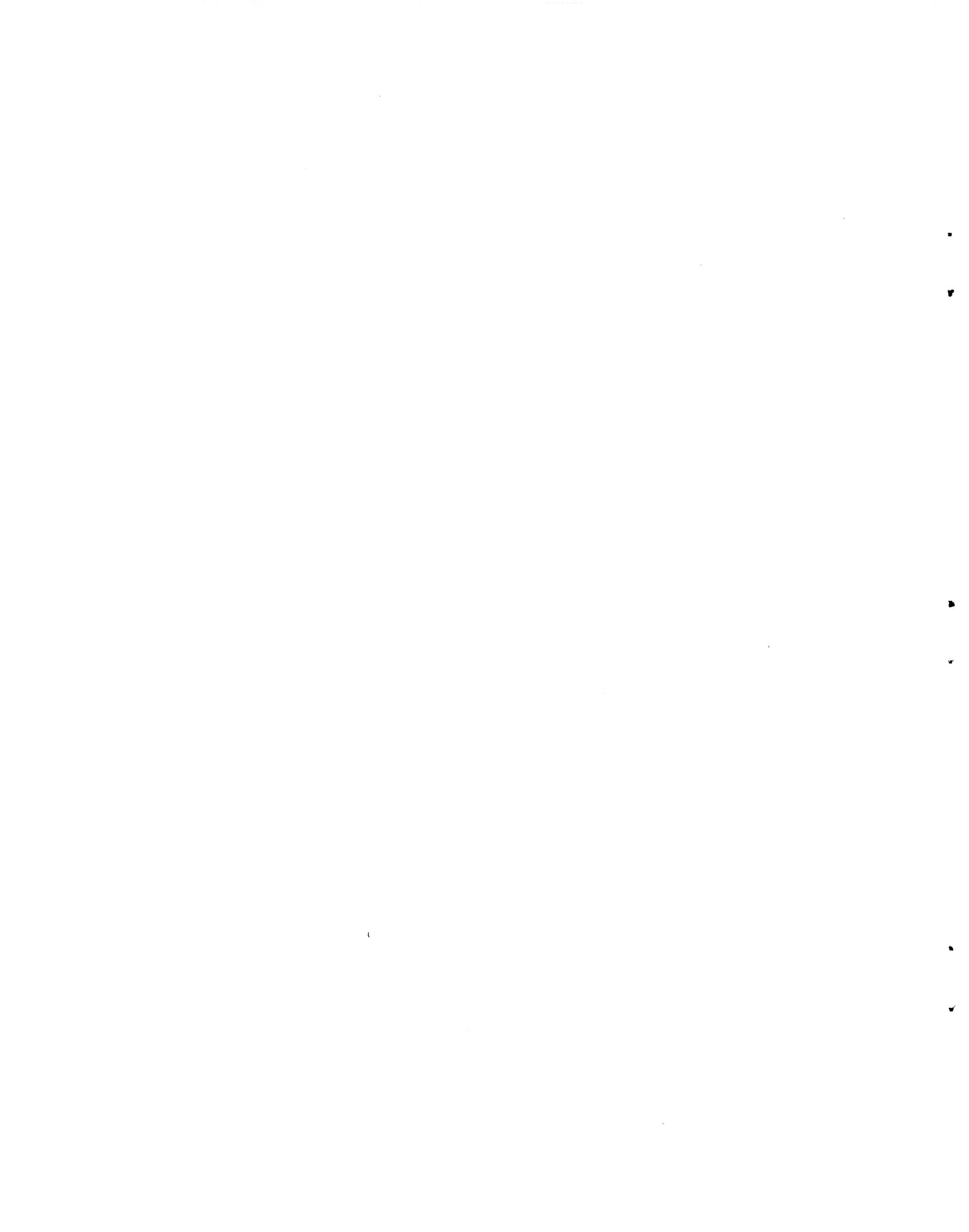
I N D E X

	<u>Page</u>
Paul Tractenberg Professor Rutgers Law School	1 & 1X
Helen Land Chairperson Education Committee Roosevelt Coalition	15 & 15X
Paul Barotta President and Founder Union Technical Institute	18
Kenneth E. Wright Academic Dean Passaic Community College	21
Sandy Sapello	29
Robert Woodford Vice President New Jersey Business and Industry Association	40
Ernest E. Gilbert Director Professional Racial Equality Support Services	44
Barbara White Vice President Wall Township Board of Education	55
Judith Esmay Member Passaic Township Board of Education	58
 1-43 :III 44-65 :I 66-67 :II - - - -	
ALSO THE FOLLOWING LETTERS, MAILGRAMS, ETC.:	
Letter from Albert G. Barnabei Past NJAD Total Communication Chairman	16X
Memo from Frank F. Kunca	18X
Mailgrams from the following:	
John and Gail P. Vergoz	19X
Nickie Wolff, Metuchen PTA Council	20X
Paterson Parent Citizens Union	21X



INDEX (Continued)

	<u>Page</u>
Mailgrams (continued)	
John H. Meyer	22X
Sandra Vaccaria, Advocates for Education	23X
Mary J. Swanson, Millburn High School PTA	24X
Betty Kiriman, Edgar School PTA, Metuchen	25X
Michael Zaccaria, Educational Study Group	26X
Jamie Vazquez	27X
Letter from Patricia Amoroso, New Milford, N.J.	28X
Letter from Arlene W. Rothenberg Essex County Council of Parent-Teacher Associations	30X
Letter from John M. McDonough Mountainside Board of Education	31X
Letter from Levin B. Hanigan Superintendent of Schools Mountainside, N.J.	33X
Letter from Jack Coan New Jersey Division, United Nations Assn. of USA	34X
Letter from Rev. Dr. Stanley I. Stuber Bergen County Council of Churches	35X
Letter from Parthenia C. Smith International Council for Exceptional Children	36X
Letter from George E. Ball, enclosing resolution of Dunellen Board of Education	37X
Letter from Ellen Caro and Rosalyn Sole	39X
Letter from John R. Shipley, Jr.	41X
Letter from Helen P. Norton Educational Study Group, Buena Regional School District	42X
Letter from S. Howard Woodson, Jr. Shiloh Baptist Church	43X
Letter from Anthony Carrino Councilman, Newark, N.J.	45X
Jean S. Haddock Scotch Plains, N. J.	46X
Letter from Angela L. Perun Plainfield, N.J.	47X
Statement of Frank W. Magovern Belmar, N.J.	51X



INDEX (Continued)

	<u>Page</u>
Statement of Samuel Morneweck Cranford Township Board of Education	52X
Statement from Lucy Mackenzie New Jersey Common Cause	54X
Statement from Peter Contardo Trenton Board of Education	56X
Letter from Dr. Virginia L. Brinson, Superintendent Middlesex Public Schools	58X
Letter from Ernest Kerstein Chairman, Education Committee, COSUN	59X
Letter from Kenneth D. Hall, Superintendent Matawan-Aberdeen Regional School District	60X
Letter from Z. Onufryk Ukrainian Congress Committee of America	62X

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SENATOR WILLIAM V. MUSTO (Vice Chairman): May I have your attention, please? I would like to apologize for the delay. Our Chairman won't be here for a while so I am assuming the Chairmanship of the meeting. Again, I want to apologize for the delay. I know that many of you go out of your way to come here. We are going to go on now with the meeting so that those who are here will have an opportunity to testify.

I believe it was explained at the last meeting how we call the list in rotation. The only preference that is given is to the legislators who may come here to testify. I don't notice any on the list today.

The first name on the list is Paul Tractenberg. If you have any prepared statements, I would appreciate it if when you come up to the microphone to testify you hand it to us. Do you have a prepared statement, Mr. Tractenberg?

MR. TRACTENBERG: I have some. I was going to give them out afterwards. If you would like them now, I would be happy to share them with you.

SENATOR MUSTO: Well, if you have them, I think it would be better for us to have them now.

P A U L T R A C T E N B E R G: Members of the Committee, I am here to add my voice to the voices of citizens who have urged you to vote against the reappointment of Commissioner Fred Burke. You should know that my decision to speak out on the issue is really ultimately a matter of conscience. Based on my longstanding professional and personal involvement in public education, I have become increasingly convinced that Fred Burke is simply the wrong person for the Commissionership in New Jersey at this time.

I have reached this conclusion with both regret and sadness because I greeted his appointment, initially, five years ago, with great hope for the State and for his personal service as Commissioner. But, I have reached this conclusion because I have seen opportunities for real educational progress being lost by the Commissioner's equivocation, vacillation, and, in fact, ineptitude. I have reached this conclusion because, in my judgment, educational progress requires belief in children - all children - and their educability, not belief in a process of political accommodation. There is a time, in my view, when even powerful political forces must be confronted and not appeased. To do so, is an act of leadership and not an act of principled self-destruction.

The Commissioner of Education, first and foremost, has to be an advocate for New Jersey's children. He should be known throughout the State, by all segments of the educational community, as one who puts the interests of children first. That is not, in my view, what Fred Burke stands for in New Jersey. Indeed, it is striking to me that at these hearings - I understand the longest hearings held by the Senate Judiciary Committee - virtually no private citizens have come forward to speak in his behalf. Many have come forward, and many more will come forward today, I understand, to speak against his reappointment.

What I want to do in my testimony, however, is not to talk in rhetoric and not to talk politically - because that is not my strength and expertise. What I would like to do is to discuss a few of what are many specific ways in which Commissioner Burke has failed to provide leadership or, in some cases, has even flaunted constitutional and legislative mandates, for which he is responsible. I will focus on a few matters which I know best and in which I can claim some expertise. I will try to avoid rhetoric and although I will deal with some rather detailed and technical questions, I hope you will not lose sight of their enormously board public consequences.

My broadest concern has to do with the administration of the so-called T & E process. Six years ago, New Jersey was put into the position of national prominence by the State Supreme Court's decision in Robinson against Cahill. New Jersey was given an opportunity to develop an education reform model which would be a national model. And, from having participated in conferences around the country with educators and State Education Department officials, I know this to be a fact, that New Jersey's experience was looked to six years ago, and more recently, as an important national experience. I also know from recent contacts with people around the country that New Jersey is no longer seen as a potential national leader in education. New Jersey is seen as an opportunity gone astray. In my judgment, this is largely traceable to the failure of the Commissioner of Education to provide strong and consistent guidance and strong and effective leadership.

The T & E process has been marred by delay, by confusion, and by obfuscation. This has undermined not only some theoretical notion of a process, but much more importantly the effectiveness of serious, committed school administrators, teachers, and school board members who have wanted to do a good job and who have wanted to engage in an exciting process of educational movement forward. It has also frustrated and disillusioned countless parents and other citizens whose hopes were raised by notions of equal educational opportunity and educational progress for all students.

In my view, what we now have is an aura that T & E is largely a paper process -- at best, it is to be tolerated; at worst, it is to be ignored. And, on that point, I would like to give you a couple of specific examples. These are all examples drawn from my own experience.

First, shocking to me, is, several months ago, I had contacts with senior people in the State Education Department, including the Commissioner himself. Out of that grew a request by me to see a compilation of those T & E policies and guidelines issued by the State which were applicable to local districts, which governed the T & E process, and which were, in effect, the T & E process.

I was told by a senior person in the Department that that would probably be a good idea to have such a compilation and that they had been thinking about it, but that, in fact, there was no repository. No one, in effect, in the State Department, including in the Commissioner's office, really was in a position to say, "These are the policies which govern the process; this is the process."

Out of that grew a set of concerns. How can local districts and how can county offices be expected to carry out a rational and effective T & E process when even the office of the Commissioner cannot advise on what policies they should be following?

To make the point more concrete and to tie it to an issue which is of great and continuing concern to me, some months ago I discovered a State Education Department publication - and I have a copy here, if anyone is interested. It is called, "Educational Planning in the Local School District: Basic Skills (Part B)." There was a printing in February, 1977, of some 3500 copies. They were distributed to all the local districts of the county offices and obviously, from the numbers, to many others. There is one section entitled, "Program Improvement Alternatives" which tells the local districts what they may do about students not achieving state minimum standards in reading or mathematics. Now, obviously, this is a matter of considerable controversy. It was a matter of controversy before the State Department

when the Commissioner opposed minimum standards at the state level. It has been a controversy since then.

I won't quote this language. It is in my statement. But, I want to tell you what the effect of the language is. This is guidance from the State Department to the local districts. It suggested that as the students failed to meet the state standards in basic skills, the local district ought to move first to retest the students, using some locally developed, or locally selected techniques. The manual suggests there are three things which can follow from local testing. One is that the local tests confirm the State Basic Skills test - that is, the student is determined, in fact, to be unable to perform at an acceptable level in the basic skills. The first option in that event is that remediation should be prescribed - a remedial education program designed to upgrade the skills of the students in these areas. That's fine. That is the way in which I always understood the system to function. But, you may look at the second and third options.

The third of them is, the local test may not be compatible with state test results and on that basis the state test results may be disregarded. In other words, the local district picks some test of its own choice, without state guidance. It determines, on the basis of that local test, that a student who has failed to meet an acceptable performance level on the state test, nonetheless can perform adequately and the student simply continues in a regular program.

That, to me, is troublesome, but the most troublesome is the second alternative, which is that in a situation where the local test, whatever it may be, confirms the results of the state test - that is, proves the student can't perform in the basic skills - nonetheless, according to this manual, if the student "is judged as performing on his appropriate level", then no major program change is required. Some minor recommendations or adjustments may be advised to assist the instructors in working with the students.

Now, make no mistake about what this guidance encourages. Imagine a student falling below acceptable performance levels on the state test, a local test is administered and the student still falls below the acceptable levels of performance - that is, he is functionally incompetent, and can't read or write at an acceptable level - yet, somehow, the local district can nonetheless determine that that student is performing on his appropriate level and says: "This student will not receive remedial help."

What if, for example, the districts determine that poor black children could not be expected to reach the state minimum standards and, therefore, simply deny them remedial help? They say they are performing on an appropriate level because they know poor black children can't achieve functional levels. Now, you might think that is impossible, but I can represent to you, based on what I have heard at a meeting - and I can identify time, place, and other people present if you wish - that Commissioner Fred Burke said that we could, by looking at socio-economic criteria, determine in advance those students who we know could not be brought to functional literacy. My response to that is, that is, in effect, the strongest argument I have ever heard against compulsory education. If you are correct and we can identify those students who throughout 12 years cannot become functionally literate, then we are going through a colossally expensive sham.

Now, I don't believe that to be the case. I reject that premise. But, that is a premise that Commissioner Burke stated very explicitly at one meeting at which I was present and I understand at other places in a public, or quasi-public setting.

Now, coming back to that manual provision which permits exactly this kind of approach - it permits a local district and may indeed encourage it to say, "Fine, we know that poor children, we know that black children, we know that Hispanic children, and perhaps poor white children, can't perform acceptably. So, if they are below the state standard, that's all right. We don't have any further burden with them."

When I raised this with senior State Department staff, I was told that no such guideline could exist. They didn't know of one. They had no idea. I went back to my office because I did not have this document with me. I found the document. I referred them to the page number. They looked at it and said: "You are right. It does exist and, yes, it creates serious problems." Yet, I want to point out to you that this meeting and my reference to this provision followed by almost two years the issuance of this document. This document has been out there in local districts for two years, being referred to by local school boards and local superintendents. Programs have been developed on the basis of it. To my knowledge, the problem has not been cured. I know of no retraction of that statement, although senior State Education Department officials say it raises problems. I shudder to think how many such illustrations there are.

In my judgment, that is a serious instance of two things: One of mal-administration. I mean, a State Department which doesn't know what kind of guidance it is distributing, has no institutional memory. And, second, a State Department which persists in such a policy is, I find, incompatible with the constitutional requirements and incompatible directly with what this Legislature has said the state educational system should be like.

I have attached to my testimony a rather lengthy letter to Bill Volk, who is the State Coordinator of T & E, which raises a whole set of additional concerns that I have about this whole phenomena of what the State Education Department calls "validating students out of remedial education." That is, it takes students who have failed to meet acceptable standards on the state test and, nonetheless, has procedures at work which permit local districts to say, "We are not going to provide remedial education." I have just given you one example.

There is another problem area different than the one I have just described, in some ways even more troublesome to me and, I suppose, even more directly more traceable to the Commissioner of Education. The Commissioner has enormously broad and important powers and duties under the Legislature's Public Education Act, Chapter 212. There is one area which I want to bring to your attention -- that is the area of budget and program review, including cap waiver responsibilities.

Many of the functions of the Commissioner in this area reflect not only legislative policy, which is important enough, but relate back to requirements of the New Jersey Constitution. Now, I want to just give you one example - again, derived from a statement which I heard the Commissioner make at a meeting in which several legislative leaders were present quite recently, March 1st.

The Commissioner was asked what action he would take if a school district submitted to him an educational plan and budget which eliminated all courses in art or music -- and art and music is just one example, you can use your own imagination. His response was that it is the local district which determines the content of a thorough and efficient education and that he would be powerless to deal with that situation. Now, in my view, that is really the ultimate perversion

of the T & E process. And, it is the ultimate perversion of the Robinson against Cahill case. But, beyond that, it is also directly incompatible with the Legislature's intention and the intention of the State Board of Education.

Again, I don't want to read you the quote which is in my prepared statement, but the New Jersey Supreme Court, when it upheld the constitutionality of Chapter 212, said - and I will quote briefly - "It has been suggested that the power, given both to the Commissioner and to the State Board of Education, to direct "budgetary changes" does not include the power to compel an increase in a local school budget above that fixed by the local authorities." That is, in effect, how the Commissioner has interpreted his power: "If the local district decrees that T & E will be a certain thing and comes up with a budget related to that, I am powerless to ask them to do more."

Well, the New Jersey Supreme Court said about that position: "We cannot accept this limitation. To do so, would be to emasculate, perhaps fatally, what we believe to have been the legislative scheme. It would thwart the State Board's authority to compel a local district to meet the financial commitments necessary to satisfy the thorough and efficient standards."

Later on, the Court said: "The Commissioner's study and review are not to be confined to a school district's financial support. There must also be included a consideration of the other elements set forth by the Legislature in the statute."

Now, one element - coming back to this point of art and music courses and the Commissioner's feeling that he is powerless to respond to such a district - is, come back to what the Legislature has enacted. The Legislature has said that one of the guidelines for T & E education is "a breadth of program offerings designed to develop the individual talents and abilities of pupils." That has been interpreted by the State Board of Education in formal regulation to include the following: That each student should have the opportunity to acquire the ability and the desire to express himself, or herself, creatively in more and more of the arts and to appreciate the aesthetic expressions of other people. Now, it seems obvious to me that an opportunity to study art and music in this one particular is essential to fulfillment of this state educational goal. The failure to enforce that state educational goal is not only a violation of the State Board's intention, it is a violation of the Legislature's intention. And, more than that, it is ultimately a violation of the Constitution.

The New Jersey Supreme Court, in a fairly tentative opinion - in my judgment - said the statute looks good enough, so we will rule it facially constitutional. One of the ways in which it justified that conclusion was in the way I have described to you, by saying the Commissioner has to really exercise some of the broad powers that have been vested in him.

Now, that unwillingness of the Commissioner to put state standards to work, to give teeth to state standards, runs curiously at variance with what he has done in the cap waiver area. As I am sure you are aware, initially his exercise of the cap waiver was extraordinary liberal. He granted almost every waiver which was requested, even if there was no conceivable way it could meet the legislative guidelines. The Legislature had said there were two circumstances under which cap waivers could be granted: If a district can show it can't provide a thorough and efficient education, or if there is an increasing enrollment likely. Those are the two circumstances.

Now, in the first year of administration, the Commissioner gave waivers to virtually everybody, without reference to those criteria. There was justifiable

criticism, among other quarters from the legislative quarters and he retrenched. Then he moved to giving very few waivers. Well, what he has done now in his own words is to "adopt some arbitrary standards." He is administering the process now by saying such things as: "Under no circumstance can any district that spends above the 65th percentile expenditure level get a waiver. We can't care what they come forward with, we are not going to look at it." He similarly said such things as: "There will simply be no waivers granted based on increased spending for extra curricula activities, or increased spending for other curricula areas."

SENATOR PARKER: Well, are you criticizing him for that, Doctor?

SENATOR GREENBERG: Excuse me, Barry. What I would like to do is let the Doctor finish and then we will ask questions.

I appreciate your remarks very much. I would also appreciate it if you could hit the highlights, as you are doing. But, more importantly, I would like - if you would agree - to let the Doctor finish before we throw questions at him.

DOCTOR TRACTENBERG: I have about two more minutes worth and then I will be finished.

SENATOR GREENBERG: Go ahead.

DOCTOR TRACTENBERG: In my judgment, this process which the Commissioner is applying and which he himself calls an arbitrary process -- arbitrary decisions - for administrative convenience, is really most unfortunate because in effect the Commissioner is developing through the back door statewide standards of what a T & E education is. He is saying a thorough and efficient education doesn't require more expenditures for extra curricula activities, doesn't require more expenditures for some curricula areas, but he is doing it without any public scrutiny, without any public attention, without any opportunity for there to be a meaningful exchange about what thorough and efficient education should amount to.

Now, I am in favor of standards being established and enforced, ultimately, at the state level. I am not in favor of this sort of procedure for it. I think that this works a great disadvantage for districts. Districts have to be told up front what the standards are. They have to be given an opportunity in advance to comment on them, and bring to bear their local situations and local expertise. That has not been possible. There has been no public discussion of what standards should be applied to the cap waivers. Yet, the Commissioner is now adopting standards.

I think one can safely predict that if Fred Burke is reappointed, the next time around the cap waiver process there are going to be different standards, differently applied; there are going to be different people upset; everybody is going to be confused; and that, to me, is symptomatic of how the potential of the T & E process, and the potential for educational reform has been dissipated.

Now, I have tried to pick just two examples which I know something about first hand and which I have a long history in and a certain amount of expertise in. You ought not to assume these are either isolated aberrations or the only examples which can be cited to you. Had I the time, I could refer to you the 50 others, which it seems to me are equally significant and which seem to me equally to bear down on the point that the system is really being maladministered. I believe that proceeds both from defects in leadership and administrative capacity and some disinclination, really, to follow, in a careful way, the requirements of the Constitution and the Statute. That is something I know something about. It is something I have invested a good part of my professional and personal life in promoting. I feel very strongly about it. My feeling is, and I echo the words

of many people who have testified before you, you have to exercise your constitutional responsibilities, scrutinize this reappointment with great care, and I hope come to the conclusion that you will not react favorably to it. I think that it will not serve the million and one-half public school children in the state well to have another five years of the kind of administration of public education that we have had in this past five years. Thank you.

SENATOR GREENBERG: Thank you, Doctor. I don't think the other members of the Committee have the benefit of knowing you, perhaps, as I do. So, I wonder if you would just indicate, briefly and specifically, the involvement that you did have, and have had, in the field because it is not apparent from your statement or your remarks.

DOCTOR TRACTENBERG: I am a Professor at Rutgers Law School. I have taught at the Law School for eight and one-half years and for virtually every semester of that eight and one-half years, I have taught at least one course to law students and to graduate students in education law. We have touched upon some of the issues which I have been dealing with in those enterprises. I served as one of the counsel to amici curiae - friends of the court - in the Robinson-Cahill case and was involved in that case almost from the start through its conclusion -- or at least its conclusion for the moment. I have been involved not only in this state but in many other states in efforts to bring to bear legal doctrine, legal requirements, to the problems of public education.

I have an on-going role. I was the director for some years - although I no longer have any affiliation with it - of the Education Law Center, which is a public interest center set up to deal with public education matters.

SENATOR GREENBERG: Am I correct in my vague recollection that somewhere I heard, or read, that you have spoken, or discussed, the possibility of the necessity of additional litigation?

DOCTOR TRACTENBERG: Yes. I have been part of a group of lawyers, many of whom were involved in the Robinson case originally, about some of the problems growing out of exactly these kinds of situations. What the State Supreme Court said in the fifth of its decisions in the Robinson case was that the Legislature's enactment was constitutional, on its face. That is, before it was put into effect, it looked to be constitutional.

The issue now being discussed is, what has been the effect of the statute as it has been applied? And, there are serious concerns on that level. My primary concerns at the moment are not in the fiscal area, but in the educational program area and that is why I am keenly interested in the issues I have come to talk with you about, because they bear very heavily - as I have indicated - on the constitutionality of the statutes, not because the Legislature didn't write the statute appropriately but because the statute isn't being administrated appropriately.

SENATOR GREENBERG: You know, we are the Judiciary Committee and not the Education Committee. But, we are vitally concerned with education. Most of us at this table were present at the time of the adoption of 212. I think it was in 1975. Senator Wiley testified. He drew the statute and testified in favor, as I am sure you know, of Doctor Burke's reconfirmation. The Senators from the Education Committee similarly testified in favor of the nomination and discussed their satisfaction with the implementation and the leadership, etc. While it is true they are not public citizens in the sense that they were, or are, elected officials, and putting aside your initial remarks concerning political pressures

and power for the moment, there is some reason to believe that at least those members of the Legislature who are monitoring - theoretically monitoring - the implementation of 212 are at this point satisfied with the leadership of the Commissioner. That is not to say they are correct and that is not to say that the leadership has been totally and completely satisfactory.

But, just one question and then I am going to give this to Barry Parker, who wants to talk to you about something. I gather that during the time since the enactment of 212 and the relatively short period of time that has gone by since then in the overall scheme of things - a couple of years - that the performance of Fred Burke, even in that short period of time, is sufficiently deficient from your point of view so as not to entrust this position to him for another five years - I believe that is what you are saying?

DOCTOR TRACTENBERG: Yes. That is what I am saying and I am saying it as strongly as I can say it. I can't climb into the heads of other people and explain why they have viewed it differently. But, I have, really, no reservations about saying that it is not only deficient, but it will become more deficient. I don't think we are on a track which is likely to lead us in a direction that I believe the Constitution demands we go in and the court has said we ought to be going in. I think we are going in the opposite direction.

SENATOR GREENBERG: Okay. Senator Parker.

SENATOR PARKER: On that point, is Commissioner Burke responsible for the fact that we are going the wrong way? You made reference to the fact that a law suit may have to be instituted again. I don't know if you were at that convocation we had in Princeton or not, when it was discussed in detail with the Joint Committee on Public Schools -- that the poor districts are getting poorer and the richer districts-- The deviation between the richer and the poorer districts is escalating instead of coming together under T & E. I assume that is one of the reasons you are saying you are opposed to Burke, because that is happening and he has not followed the statute and made the districts provide for the enrichment programs, and whatever have you, that is necessary under the T & E bill. Am I correct in that assumption?

DR. TRACTENBERG: No, I am not really saying that, at least I am not leaning on that very strongly. I see the statute as having two dimensions: a fiscal dimension and an educational dimension.

SENATOR PARKER: Right.

DR. TRACTENBERG: There are relatively limited things that the Commissioner can do as a fiscal matter.

SENATOR PARKER: Right. That is what I wanted to get at - and how you can separate the two, because the educational goals that are set out and required in T & E have monetary figures attached to them. They are cost figures.

DR. TRACTENBERG: That's right.

SENATOR PARKER: If he has fiscal restraints, how can he possibly follow the mandates that are required under T & E?

DR. TRACTENBERG: Well, I have always taken the position that an adequate amount of funds is necessary but not sufficient for a good educational system. There are a lot of other aspects which are relevant to whether an educational system is functioning appropriately. You can't do it if you don't have enough money, but if you have enough money that is, in itself, not a guarantee that you are going to run an appropriate educational program.

There are arguments that the statute itself is defective on the fiscal

side in terms of the formula.

SENATOR PARKER: The formula or the funding?

DR. TRACTENBERG: Well, the formula has been the subject of more criticism, I think, than the level of funding. Those things the Commissioner can play a very limited role in and if there is litigation which returns this issue to the court, the issue, in my judgment, will turn much more on whether the statute itself, as the formula has been put into effect and operated, is adequate.

What I have been addressing and what I think it is fairer to place at the Commissioner's doorstep is, what about the educational reform part of Chapter 212? There, I have no problem saying I think the Legislature did a first rate job in spelling out, at a state level, at a legislative level, what a thorough and efficient education system should be like. It passed to the State Board the responsibility for flushing out that legislative skeleton and the State Board has discharged that responsibility. But, it placed heavy responsibility on the Commissioner and in my judgment, the Commissioner has not adequately discharged those responsibilities in terms of educational program.

SENATOR PARKER: I missed the first part of your comments, but when I got here one of the things you commented on was the 65 percentile and the waiver for the caps. You know, I started to interrupt you at that point because it is my understanding that the Governor mandated that and the Commissioner went along with it to save money - went along with the cuts; the \$22 million we cut out of education and the \$27 million we cut out of handicapped aid. I just wonder how the Commissioner was deficient in these areas when we did that? You seem to separate them and I may have missed the first part of your testimony in which you may have indicated specifically, on the educational part of T & E, where he fell down.

DR. TRACTENBERG: Well, I think I did address myself to that.

SENATOR PARKER: I will read it then.

DR. TRACTENBERG: On this one point, the Legislature has been very specific in Chapter 212 in defining the Commissioner's responsibility in the cap waivers. It said you can grant a cap waiver if you find that only by exceeding the cap waiver can a district provide a thorough and efficient education and, secondly, if there is an increased enrollment problem. That was the Legislature's advise.

SENATOR PARKER: And he has not been following that? He has been giving the waivers for other purposes?

DR. TRACTENBERG: Well, in the original administration of it he admitted he was giving them for reasons that had nothing to do with either of those two legislative criteria.

What I am saying is, now he has retrenched and has been much more restrictive in granting them. But, I think he is granting them for the wrong reasons. It seems to me possible that a district, which has been a relatively high-spending district could, in fact, make a case as to why it absolutely could not provide a thorough and efficient education unless it was permitted to exceed the cap waiver. It might, for example, be a district with a very high percentage of handicapped children, or bi-lingual children -- special educational circumstances.

SENATOR PARKER: Or gifted children. Why should they continue those programs? I missed that. You addressed those and said specifically there are areas that he fell down in, in "that" particular area? You put that in your statement?

DR. TRACTENBERG: I think so. I would be glad to amplify on that.

SENATOR PARKER: I just didn't see how you could separate the two, but I haven't read your statement.

SENATOR MUSTO: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR MUSTO: Senator Gagliano.

SENATOR GAGLIANO: Just one or two questions. Professor, since the hearings have started, a few people have told me that since we know what we have with respect to Commissioner Burke, it might be a mistake - it probably would be a mistake - not to confirm his nomination because we don't know what we are going to get. Now, against that backdrop, do you still feel that Commissioner Burke should be not confirmed and that we should, in effect, ask the Governor to find someone else?

DR. TRACTENBERG: Yes, absolutely. It is my personal view that there are highly competent people within the state who could perform the task of Commissioner in most ways more effectively than Commissioner Burke has performed. I don't see that as a serious problem. I have trust in the appointment and confirmation process. That is why I am here speaking to you because you are considering the matter openly and I have a belief that should Commissioner Burke not be reappointed that someone who can better perform the job can be found, and probably be found from within the state.

SENATOR GAGLIANO: The second question is, do you, as a student of education and the process that we use in New Jersey - with respect to federal funds - have any experience in that?

DR. TRACTENBERG: I have some, yes.

SENATOR GAGLIANO: Are you familiar with at all with what is being called the Worthington Affair, or the Worthington Situation?

DR. TRACTENBERG: Yes. Basically, it is just what I have read. I don't have any detailed knowledge beyond that.

SENATOR GAGLIANO: Let me ask you this: Is it appropriate, in your mind, for federal funding to come into the state by way of a school district and then be expended by that district in effect on a statewide basis, where the State Department of Education can't handle it that way?

DR. TRACTENBERG: Well, I have some problems at a lot of levels with what I understand the so-called Worthington Affair involves. One is the problem you described. But, it seems to be very much tied in, if you will -- or at least the kind of climate that I believe has been created by Commissioner Burke's administration seems to permit these kinds of matters to occur. I am not saying that there was a direct cause-effect relationship. I don't know that to be the case, and I understand the matter is under investigation by the Attorney General, so obviously it is inappropriate to speak to that.

But, I do think that there has been a climate created in the administration of the entire educational program which I see as permitting these kinds of things to occur. There is a kind of looseness in an administrative sense of the sort I started my testimony with. Nobody really has a firm fix on what the requirements are, nor indeed what the State Department has issued itself by way of guidelines. So, it is hard for me to imagine there is a central presence in the State Department that has a clear fix on what it is that restricts the use of federal money.

SENATOR GAGLIANO: And you feel that definitely would be in the purview of the Commissioner's duties, to establish the proper climate so that that sort of

thing might not happen?

DR. TRACTENBERG: Absolutely. Although I fully concede that the Commissioner has a difficult job - I would be foolhardy not to say that - and that there are pressures bearing down on the Commissioner. Nonetheless, granting that, it seems to me that the job has not been well done, either in an administrative sense or in a policy-making sense, or in way of public relations. I don't think the Commissioner has projected to the general public of the state an image that New Jersey has to move ahead, that New Jersey has an opportunity to be a national leader and has had that opportunity for a long time. I think people out there - and as legislators, I am sure you are attuned to this - have a sense of, "it is all a sham; it is all paper; it is all nonsense; it is all a burden; there is no movement forward; there is nothing positive happening. I think that not only gives rise to such incidents as the Worthington incident, but also to tax revolts and the like. People just don't feel confident in the administration of important programs - a program like education, which accounts for over \$3 billion in this state - and they don't have the feeling they are getting their money's worth. Things are sliding. There is waffling. There is movement back and forth. There is no sense of a clear and consistent commitment. And, I have to say that is the responsibility of the Commissioner, as to educational matters. I think he has to stand up for a position which people in this state recognize and can come to agree with.

SENATOR GAGLIANO: Thank you, Professor.

SENATOR MUSTO: Senator Vreeland.

SENATOR VREELAND: Thank you, Mr. Chairman. I have two questions. The first question would be, in your opinion, Professor, if the so-called T & E law had the proper implementation, the quality of education in the State of New Jersey for the students would have been improved, but has not been because of Commissioner Burke's heading the Department of Education? Are you saying that in essence?

DR. TRACTENBERG: I am but let me qualify that. It may be hard to quantify that improvement over a period of a few years. I don't think it is fair to say that if there were someone else in the Commissioner's seat, or if Fred Burke had done a better job as Commissioner, we would see dramatic improvements in student performance. I am not saying that. I am saying that since the Department has chosen to use the so-called process approach, it seems to me that very process has gotten off the track and we are not moving in the direction that I believe will result in improved education and improved pupil performance.

What we know from the accountability and monitoring part of the T & E statute is that education is not very health in New Jersey and that there are many students - 25% or 30% of them throughout the state - who can't even achieve a relatively low level of proficiency in the basic skills. And, that is not a problem exclusively of the urban areas, there are some advantaged suburban areas that have been surprised at the results of the testing program.

I think we now have a clear diagnosis. What I am concerned about is that we don't seem to be proceeding effectively, based on that diagnosis, to deal with the problems. The problem would not have been eliminated in four or five years, no matter who was the Commissioner. What I am saying is, the way things are going, I am doubtful they will be eliminated no matter how long we proceed on this course.

SENATOR VREELAND: Well, would they be eliminated if the T & E law were amended, or changed, to be able to meet these problems that you point out

are not being met today?

DR. TRACTENBERG: I think the law, in terms of educational components, as written, is a reasonably effective charge to the administrators. The problem is not, by and large, with that portion of the statute. The problem, in my judgment, is with the administration of the statute.

SENATOR VREELAND: One more question. It has been alluded to here - and I have heard different people make this statement - that Commissioner Burke, where there was a case of making a decision as far as the NJEA was concerned, did, in most cases, side with the NJEA versus the State Board of Education. Do you think that is true?

DR. TRACTENBERG: Well, I suppose my personal view is that on some of the issues I have felt very strongly about and which the NJEA felt very strongly about, but in the opposite direction, the opposite view to mine has prevailed. I don't really know what goes on in direct or indirect communication, but there are issues like, for example, minimum basis skills--

SENATOR VREELAND: That's the one.

DR. TRACTENBERG: Yes. Someone, before the hearing began, said that Commissioner Burke was the father of the minimum basic skills program. Well, he was the least willing father I have ever seen if that is the case because the Department and I had many rather heated exchanges about whether minimum basic skills on a state level was a good idea or a feasible idea or not, and the Department and Commissioner Burke personally, consistently, took a negative position. Now, why he did that, I really can't speak to.

SENATOR VREELAND: In other words, you are not saying it was because NJEA took a position?

DR. TRACTENBERG: I am not saying it was not for that reason, but I don't know it to have been for that reason either.

SENATOR VREELAND: Thank you, Mr. Chairman.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: Thank you Mr. Chairman. I have just one or two questions. Professor, first of all, I am glad that you started out your remarks by saying that ultimately this question is a matter of conscience and that you have chosen to exercise your conscience in opposing the nomination. I feel that after we have heard everything we have to hear, that is what it is going to get down to for each member of this Committee and each member of the Legislature: "On balance, strengths and weaknesses, after you have heard what the public has to say, does the Commissioner deserve a second term?" I have some of the concerns that you have but I also am vitally aware that with Chapter 212 we had great expectations that we were out of the woods and everything was going to be great. I am just wondering if that wasn't a nirvana that didn't exist and if, in a new system, some element of change of direction, and some confusion, will be undesirable and there will be some disappointment. Isn't that necessary? Isn't that inevitable in a real world and hasn't some of the change of direction that you criticized - and, to some extent, properly so - been a reflection of what the public was saying -- the consumers of education; the parents; and the people in the educational process? Haven't they had different attitudes over the last three or four years about loose caps, tight caps, etc?

DR. TRACTENBERG: I think, clearly, some flexibility is necessary, desirable and inevitable. What I am suggesting is that what has happened, in my judgment at least, dramatically exceeds that level of flexibility and changeability.

I think what has happened is the creation of a sense of real aimlessness because I think there has not been the clear articulation of basic principles.

Just to give you one further example of that - and I suppose this builds on Senator Vreeland's question in a sense - the State Department and the Commissioner himself have really been perceived in two ways. One is the way that I have described, of not standing for principle which the public at large and segments of the educational community could identify. On the other hand, I think the Department in some respects has functioned really too much as an advocate. For example, I don't know if this has been brought out in previous testimony but I know from many members of the State Board of Education that they have actually explored the possibility of retaining independent staff because they felt they were not getting objective information from the Department; that they were getting information which represented the point of view-- And that was particularly so on the minimum basic skills issue, where they were the captives of competing advocates, one of which happened to be the Commissioner and the State Department.

SENATOR HAMILTON: Given that, and given the aimlessness which you have characterized as afflicting the process, I am puzzled by at least a couple of things and I want you to be mindful of the fact that this is the Judiciary Committee and not the Education Committee. How do you resolve, among other things, the administrative code, if there is an aimlessness, and how on the one hand is the problem solved - or remediated, if we can use that word - by not reappointing Fred Burke at the same time there is perceived to be a very real need to return to the courts to somehow rectify a system? It seems to me that if the problem is with leadership, that is somewhat inconsistent with asking the court to say that as administered this statutory scheme for education is unconstitutional. It seems to me that those two things are if not diametrically opposed, at least inconsistent. If what we need is a better leader, then maybe the system is all right and what is wrong is that the legislators, who have an oversight function, and the State Board of Education, which has an obligation to promulgate an administrative code, share in that blame.

DR. TRACTENBERG: Well, I won't totally absolve the administrative code. I have had many issues with it, but I don't think, on balance, it is a bad charter to the Commissioner of his responsibility. I don't think that there is the inconsistency, however, which you describe. There is in law an action called the mandamus action which is an action you bring to the court to have the court order a public official to do what the public official is already charged with doing. Now, that could happen because if through State Board oversight or legislative oversight, Commissioner Burke is told, "what you are doing is not appropriate; you are not really carrying out our mandate"-- Surely, that could come from the Legislature, it doesn't have to come from the courts.

SENATOR HAMILTON: Didn't the tightened cap procedure, at least in part, come from some legislative expression of discontent with too loose a cap procedure in the first year?

DR. TRACTENBERG: Yes, and the minimum basic skills areas is another area where the initial Chapter 212, in my view and in the view of many people who have read it carefully, required statewide performance standards. The Department interpreted it differently and said, "No, it doesn't. Our state standards will be what each of the local districts determine." And, the Legislature returned to the matter and said, "No, that is not what we wanted", and enacted a separate bill which changed Chapter 212 to make it indisputable that statewide performance standards in the basic skills were required. So, it is surely open to the Legislature,

by further amendment or by general oversight function, to say to the Commissioner, whomever he may be, "You are not properly administering the statute." That has been done and I hope it will be done.

It is not incompatible, however, for those who are dissatisfied with the administration of the statute by the Commissioner to go to a court and say to the court, "Court, you should direct the Commissioner to do what the Commissioner is not now doing because nobody else is doing that."

SENATOR HAMILTON: Well, I don't want to go too far down that road. I think if the educators and the Commissioner and, as a last line of resort, the Legislature, and certainly the State Board of Education can't make the educational system right and can't improve the general functioning of education of the children in the system, I don't see how the courts are going to be able to do it. I really and truly don't.

I am a lawyer, like yourself, and I really think we have far too often had recourse to the courts to solve complex problems and expect seven justices to come up with answers that all the rest of us can't come up with. They put their shoes and their trousers on the same way you and I do. I don't know that they are going to do that much better a job. I do think that if you have your way and if the people who agree with you have their way and Fred Burke is not reconfirmed - and I am open on that question - I suspect what will happen is, everybody who now is railing about the system will go to sleep while a new Commissioner comes in and finds his way and begins to do his thing with the statute that doesn't give everything in black and white, and the administrative code, which doesn't spell out every nuance, and three years down the road, or two years down the road there will be criticism from one side or the other with respect to the new Commissioner in one degree or another about what he is doing with the statute and the administrative code. I am afraid if we put together all the people who ought to be on their toes - the legislators, the State Board, the parents, who aren't terribly involved statistically - they will all go to sleep while we get a new Commissioner who is going to bring us nirvana. I really think that will happen.

DR. TRACTENBERG: Well, I think there is certainly a risk. I should make myself clear on this point. It is not that there is opposition to Fred Burke's performance on the job that somehow automatically means he should not be confirmed. Indeed, I can't imagine a Commissioner who did an effective job who would not, in the course of doing so, antagonize some group somewhere in the state who has some interest which is not being met, or is being frustrated by an effective performance on the job.

The problem, as I see it, is that the performance is not effective, and I suppose you could say it is my ox who is being gored. But, I think beyond that, I don't really believe - and I haven't seen personally any evidence to indicate this - that if you could get into the heart of hearts of people, there are really any people in the state who are excited in their support of Fred Burke. I don't really believe he has been able to generate that kind of strong and vocal and committed support.

SENATOR HAMILTON: I don't know about that and I recognize, I think, some shortcomings, at least in the areas that you have suggested. But, I have a feeling when all is said and done - and this doesn't mean that I will vote for confirmation - that he is a deeply caring person about all aspects of education in New Jersey and

about all the students. Coming from an urban area, one of the things I feel very positive about with respect to the Commissioner is his commitment to do something about urban education. That doesn't cover all sins, but it does go in a substantial direction of having the right kind of instincts to start out with.

SENATOR GREENBERG: Excuse me. We are not going to have a new Commissioner if we are going to continue to spend hours with each witness, although I must admit it has been a long time since I have been to law school and you have brought back some fond memories. We do appreciate your appearance here and the content of your remarks.

I assume all the Senators have had an opportunity to speak. While I was out I understand that Senator Parker made a comment with regard to his impression of the fact that it was a directive from the Governor's office, or a statement by the Governor, indicating a policy of denying waivers in local situations over the 65th percentile. My understanding is that is not correct and that that termination has been made by the Commissioner on an individual basis.

However, this Committee will have an opportunity to question the Commissioner on that subject, as well as all others because it is my intention to have him back at the conclusion of these hearings for such questions as the Senators might have of him.

Thank you very much, Doctor Tractenberg.

DR. TRACTENBERG: Thank you.

SENATOR GREENBERG: Helen Land.

H E L E N L A N D: Senators, I don't have copies of my speech, so if you would like me to send them to you, I will.

SENATOR GREENBERG: All right. Miss Land, it was my fault for the delay in getting you on the platform because of the time that was consumed by the very interesting speaker preceeding you. But, for you and for everybody else who is going to testify, I would like to go back to the system we had been following, of trying to keep the testimony as short and concise as possible.

MISS LAND: I have a written speech and I don't believe it will take very long. This is my third day here, so I hope I don't have to spend any more time.

SENATOR GREENBERG: Go right ahead. Tell us who you represent, if anyone other than yourself.

MISS LAND: Well, that is part of my speech. I will read it, all right? My name is Helen Land and I am a parent of children in the public schools in Newark. I am also a community person, living and working in the Roosevelt section of Newark and the Chairperson of the Education Committee of the Roosevelt Coalition.

I can attest to the fact that the Committee members and other parents living in this area do not advocate the reappointment of Commissioner Burke for another five years.

On our Committee we have parent members representing five elementary schools. The school population is made up of various ethnic groups. We feel that Commissioner Burke has not been responsive to the educational needs of our children. Even the school personnel has indicated that the T & E program is largely non-existent, except on paper and the teachers are burdened with much paperwork.

On one occasion I sat in on a meeting at one of the local schools and though the guidelines for the T & E program, as outlined to me by the county spokesman at a "rap session" at Essex County College, were supposed to include parents and other residents, only one grandparent attended the meeting. I was the only

resident who attended.

This school, with a total school population of 1100, had 576 children who were tested for low grade level. I say almost 50%, but that is over 50%. Incidentally, the rap session referred to above was sponsored by the Mayor's policy development organization and one of the requirements was a registration fee of \$5.00 in advance, and \$7.00 at the door. Thus, this discouraged the participation of many parents.

Mayor Gibson, during the last election in Newark, ran on the platform of abolishing the Board of Education. He said he would have legislation introduced to make the Board of Education a part of City Hall, being run similar to the Water Department.

At the risk of being repetitious, I must state that the funds were not distributed properly. At a recent meeting our Board of Education President pointed out the disparity in the per pupil expenditure between Newark and more affluent areas, with Newark spending \$1,980 per pupil and other areas spending \$2,400 and over.

Taking initiative and finding ways to solve problems is not usurping the authority of the local board of education. When help is needed on the local level, such as with recent deficit problems, Mr. Burke should have made a positive decision immediately. What is wrong with the Mayor or the Superintendent of Schools requesting help where needed and being given that assistance?

Peter Shapiro, in a conversation with President Carter, requested help and received it. This did not usurp the Essex County Executive's authority. In fact, he gained the respect of many people.

Commissioner Burke's inaction and lack of leadership in this instance has caused a great deal of hardship on parents, children, school personnel, etc. The greatest needs are in the urban areas where buildings are ancient and classrooms are overcrowded. Yet, Commissioner Burke has decided that urban children are not educable. I can tell you that they are educable. I have taught many inner-city children, on a volunteer basis, to read and compute. They start out with the same intelligence and abilities, but somewhere along the line the system fails them. Given the proper tools for learning, such as books, supplies, adequate classrooms, and teachers who are qualified and accountable, these children can succeed.

I am also First Vice President of one of the local P.T.A.'s. Here is a copy of a letter, written to you, dated March 12, 1979, from Arlene Rothenberg, Chairperson of the Legislative Committee of the Essex County P.T.A., in which letter she advises that the Board has voted to oppose the renomination of Burke, citing his lack of leadership and indecisiveness, etc.

The point I am trying to make, Senator Greenberg, is that with the expressed opposition to the reappointment of such a large number of people in your district - the Roosevelt Coalition covers the 26th and part of the 28th - there must be some validity to the statements about the Commissioner's weak and ineffective leadership.

We, as parents and community people, know about the drugs in the schools, ineffective remedial education, truancy, inadequate budgets, etc. We hope you will take our concerns into consideration and refrain from endorsing Commissioner Burke for another five years.

I brought a copy of a Reader's Digest, which shows whêrê a successful

program was set up. In closing, I would like to urge you to read the article entitled: "School Promotions Must be Earned." It is in the September, 1978 issue of Reader's Digest. This expresses opposition to social promotions. Thank you very much.

SENATOR GREENBERG: Thank you. Senator Gagliano.

SENATOR GAGLIANO: No questions. Thank you.

SENATOR GREENBERG: Senator Vreeland.

SENATOR VREELAND: Just one, Mr. Chairman, that I would like to ask.

The statement attributed to Commissioner Burke, that by looking at the socio-economic criteria we could determine in advance those students who could not be brought to functional literacy -- is that true, do you think? In other words, looking at the status of where they come from, you could make a determination right away as to whether or not they would ever be able to be literate?

MRS. LAND: I don't think it is determined on where they come from. I think any child can be taught if he is given the proper tools. I have done it myself and I live in that kind of a neighborhood. I live in the so-called "ghetto" in Newark.

SENATOR VREELAND: Thank you. I have no further questions.

MRS. LAND: May I make one other statement?

SENATOR GREENBERG: Yes.

MRS. LAND: My two children are now in the 9th grade. We were talking about minimum basic skills. Now, I don't know everything that is involved with that. Art Thomas and the gentleman who was here before, they know all about that. But, I do know that my children took a 6th grade test which was the old test and which was a much harder test. And, in the last two days they have been taking another test and I asked my daughter the day before yesterday what kind of test it was. She said, "Well, it was a very easy test." She said, "I was able to go over it twice before the time was up." Here it is the 9th grade. I said, "Well, on what level would you say it was?" She said, "The 6th grade." That is a direct quote from my daughter.

So, I do believe that these tests are easier -- they have been made easier than they should be.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: Thank you, Mrs. Land. No questions.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: Just one. You had a letter from the P.T.A. If my recollection serves me right - I missed a couple of hearings - that is the first we have heard from the P.T.A., or any group in the P.T.A.

MRS. LAND: Well, this is the Essex County P.T.A.

SENATOR GREENBERG: We have received letters from P.T.A.'s.

MRS. LAND: This is addressed to the Honorable Martin L. Greenberg, Chairman, Senate Judiciary Committee.

SENATOR GREENBERG: Right. We have received that letter and others and they have been given to the staff. They are part of the record. You will see it, if you haven't already.

SENATOR PARKER: I was concerned at the last meeting about that. I don't have any further questions.

MRS. LAND: Would you like this copy?

SENATOR GREENBERG: Yes, please leave that and we will incorporate it in the record. Thank you, Mrs. Land.

MRS. LAND: Thank you.

SENATOR GREENBERG: Paul Barotta, New Jersey Advisory Council and 1202 Commission.

P A U L B A R O T T A: My name is Paul Barotta. I am the President and founder of Union Technical Institute, a private school that has been in continuous operation for a period of thirty-two years. I have served in New Jersey, voluntarily, for more years than that and at present I am a member of the New Jersey Advisory Council on Vocational Education for the past 9 years. Also, I am a member of the 1202 Commission, which is an adjunct to the Department of Higher Education, for the past three years. Both these agencies are mandated by public law if any state is to qualify for federal funding. The main function of these two organizations is to serve as an oversight so that the U. S. Office of Education can be assured that the funds are spent to reach a certain target population under the Federal laws.

I speak to you today not in any of the capacities of the two organizations that I am a member of, but as a citizen of the State of New Jersey and a person who has dedicated many years to the public sector voluntarily. The State Advisory Council has not asked me to speak here today, neither did the 1202 Commission. I am here for three main reasons:

1. The children of our state, for whom I have great concern in terms of their educational future.
2. The taxpayers of the state who are pouring millions of dollars into public education without a cost effective return.
3. I believe this is the most important and that the desire to see that all agencies of government, especially the Department of Education, which affects the lives of all the people in our state, are charged whereby these departments do not harass, do not procure political favors, or become an instrument to be feared in the way that it provides its services to its clients.

Many of my experiences in the state educational area are concerned with training people to get jobs and make a living in this depressing economy. I have stayed alive in private school work because I have been able to provide these services and because I have received commendations where these people are getting jobs in the area in which they are being trained.

I have become a member of this Advisory Council on Vocational Education simply because I wanted to share my expertise with the public sector and perhaps help that educational sector in giving them techniques which would cut the red tape and put people into the workforce faster than the traditional way.

All of us, in this day and age, know the problems we are faced with in terms of unskilled and unemployed youth. I was not looking for the State Board of Education to transform its educational facilities into proprietary schools, but I did feel that I had a certain amount of experience whereby the techniques of industry could be employed, allowing the corporate know-how to help the public sector in the training of our citizens. I felt that if we coordinated with other agencies in the training of these people and used the space available with the proprietary schools in order to alleviate the overcrowding, that the public system would be most happy to receive such advice.

I never believed how wrong I could be. I never dreamed that my public service in the State of New Jersey would turn into a nightmare. That nightmare,

according to news reports, went as far as the request of Dr. Burke that my schools be investigated by the Attorney General for certain improprieties, which investigation, I might add, showed no such improprieties.

I would ask this Committee's indulgence for a few moments while I relate some of the highlights of the problems that I have faced in carrying out public duties.

SENATOR GREENBERG: Could you please direct those remarks and your subsequent remarks to the issue before this Committee?

MR. BAROTTA: Surely.

SENATOR GREENBERG: This has to do with the confirmation process of Doctor Burke.

MR. BAROTTA: I would be very happy to do that.

SENATOR GREENBERG: Thank you.

MR. BAROTTA: The cultivation of, and providing leadership for, vocational education statewide organizations to serve only in the special interests of traditional and public vocational school program offerings for the purpose of not only the proprietary school sector in the delivery of vocational programs but also the community college and CETA sectors, is one of the problems I have faced. Only recently, at the insistence of the State Advisory Council, do we get any signs of coordination activities regarding vocational programs within our state. And, I am going to highlight as I go along so I don't take too much time.

Looking at this kind of activity, where legitimately established organizations are used as tools, you can take what is happening to the independently established State Advisory Council which, as I mentioned before, is mandated under public law to oversee the activities of the Vocational Division. This Council which must evaluate the performance of the State Department is becoming nothing more than a tool for Dr. Burke and is being redirected away from its federal job to tell the State Board what may or may not be wrong with the operation of the Division of Vocational Education.

Dr. Burke and his assistant, Dr. Wenzel, are directly interfering in the appointment process which is the Governor's direct responsibility. They have placed Dr. Worthington on the Council, whose tenure on the council appears to be one of total disruption and finally ended in a most horrible and scandalous conflict of interest charges that this state has ever seen.

SENATOR GREENBERG: Sir, you probably know by now that the matter of Mr. Worthington is being investigated by the Attorney General's office. If you have information in connection with that matter, I suggest that you give it to the Office of the Attorney General immediately. This Committee is not in a position, nor does it have the expertise, ability, or time, to resolve that question. I repeat, therefore, whatever you have, give to the Attorney General.

MR. BAROTTA: Okay, sir. I will eliminate the name if I come to it.

Dr. Wenzel, the Assistant Commissioner of Vocational Education and who I feel is responsible for the "voc-ed" programs at the direction of Dr. Burke, has communicated with Council members and members of the staff regarding interviewing of candidates for the Advisory Council. This is contrary to the U.S. Senate concerns, which states the Council should be independent. They should be the evaluators of the effectiveness of programs within the state and they should be independent commentators on the advisability of the provisions of the state plan.

This independence, especially from the Department of Education, is essential if the Councils are to make a sound, objective judgment.

The funding practices of the Department of Vocational Education in the State of New Jersey are highly questionable in view of the recent disclosures and recent events. What the Committee does not realize is that funds are distributed for vocational programs at the beginning of the fiscal year, and many of these funds are returned from the local districts at the end of that fiscal year because the districts were unable to spend them. It is here, when the Department has the same fiscal year funds a second time, that they are in danger of using these funds at the discretion of the Department. Gentlemen, discretionary money is power and it may be in this kind of setting that we have set the stage for the so-called pass-through of funds within the local districts and strictly for whatever department purposes they may be earmarked without following State Treasury guidelines or bidding procedures.

Back in 1977, after five years of study and five years of support from the New Jersey Advisory Council, Senate Bill No. 409, which I know Senator Musto was the prime sponsor of, was passed to allow contracting in the private proprietary schools. This bill was passed without one dissenting vote in the Assembly or Senate and that bill was signed into law under Chapter 290.

SENATOR GREENBERG: That is partly because of the sponsor.

MR. BAROTTA: It was passed so that any approved and accredited proprietary school could offer skill training to more secondary students because, according to Dr. Burke, our area vocational schools were overcrowded. In fact, at one of the meetings he said there were 14,900 students who were graduating from high school and who couldn't get into the area vocational schools. Still, the proprietary schools had 30% space availability.

The idea was also to provide a flexibility in training to allow the non-public school student access to vocational programs that did not exist.

The Department, under the direction of Dr. Burke, saw fit to choke off the intended use of this bill. It continues to spend between two and three times the cost of the private school in voc-ed programs and still ignores the contribution which the private school can make in this effort.

When I noted these things, I found myself maligned in public and subject to subtle persecution by that department. Apparently, the department has reached an ultimate goal in that I have heard, just yesterday, that communications have been sent to officials to discredit me so I would not be reappointed to the Advisory Council. These discrediting statements, I am told, come directly from the top office of the Department of Education. Is this the thanks that a person receives from this administration after years of public dedication without a salary, and is this what is happening? There is no room for dedication, but merely rubber stamps on our Advisory Council.

If you will recall, it is in this setting over contracting that Dr. Wenzel, the Assistant Commissioner, in his horrifying statement at a public meeting, said he knew contracting was going on and would not blow the whistle. Dr. Burke knew that statement was made and did nothing about it. You read the same reports in all the papers in this state and I don't believe the Senate has done anything about either.

Since when do we allow illegal activity in government without raising an eyebrow? The incidents reported about consulting favors also seem to go right over Dr. Burke's head.

I would ask these final questions about Dr. Burke's desire or ability to uphold the laws of this state and speak in truthful terms:

1. Why did not Dr. Burke conduct a thorough investigation of the fact that private mail of the Advisory Council Chairman to the Executive Director

was intercepted, opened, copied and distributed to the individual about whom the conflict of interest was all about and, to this date - since last May - the original copy has not been returned to the Advisory Council?

2. Why were pressures placed on Salem County Vocational School after the Division of Vocational Education became miffed over an evaluation report of the Division, which was written by a consultant to the Advisory Council - without a fee, without a salary - who happens to be the Superintendent of that area.

3. Why are Burlington County Vocational School Superintendent and Board Secretary being pressured by the County Superintendent and State Audits in almost every area following their unbendable statements that a certain consultant never worked for the Burlington County Board?

And, finally - because time is running out,

4. Why have you accepted on face value, so far, the testimony of Dr. Burke before this important body that he has a signed contract in Burlington County regarding a consultant who was hired by that Board? The document, he later said, was in the hands of the Attorney General's office.

If you are really concerned with the truth of these matters, you will investigate them thoroughly before you give this State another five years of Dr. Burke.

I beg you and I plead with you, I demand that you right these wrongs by denying Fred Burke the keys to an office that must remain above reproach. If you will not do this for state education, then you must do it for the children who will become the innocent victims of an incompetent leadership in office.

I thank you.

SENATOR GREENBERG: Senator Gagliano.

SENATOR GAGLIANO: I have no questions. I just want to note that Mr. Barotta's Union Technical Institute is in my District - in Eatontown - and I know him to be a vocational educator of many years experience and, as he indicated, many years of work for free for the State. I appreciate his remarks.

SENATOR GREENBERG: Senator Vreeland.

SENATOR VREELAND: No questions.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: No questions, Senator.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Thank you, sir.

MR. BAROTTA: Thank you.

SENATOR GREENBERG: Ken Wright.

K E N N E T H E. W R I G H T: Good morning, Mr. Chairman and members of the Committee. I thank you for the opportunity to be heard on this very important issue. While I do not represent myself to be completely knowledgeable in all areas bearing on the Commissioner's possible reappointment, I have had considerable opportunity to observe the Commissioner in action over the past five years. I have done so in five different capacities.

First, I was formerly the Director of the Community College Program for the State of New Jersey in the Department of Higher Education. There, I had considerable contact with the secondary school system, the state agency which

administers to it, and some limited contact with the Commissioner himself. There was opportunity to gain insight into the general operations of the state organization, and I also had specific dealings on certain issues concerning educational policy.

Second, I am currently the Academic Dean of one of New Jersey's community colleges and am in a position to comment upon the educational preparedness of students coming to my institution and other colleges.

Third, because of that position, I am also a member of the Academic Officers Association of the State of New Jersey and I have had the opportunity to discuss with peers the same questions.

SENATOR GREENBERG: What community college is that?

MR. WRIGHT: Passaic County Community College.

SENATOR GREENBERG: Thank you.

MR. WRIGHT: Fourth, I am a resident of the City of Clifton and a taxpayer and, hence, have a vital interest in the financial efficiency of our educational operation.

Fifth, and perhaps most importantly, I am a concerned parent who desires that our educational system does indeed deliver the thorough and efficient program promised by the State Constitution. I have been interested and active in P.T.A. and board meetings about local matters which affect me directly.

I am greatly concerned about the obfuscation evident in the statements made by people on both sides of the issue of whether Commissioner Burke should be reappointed. To his detractors I would say it is not reasonable to blame the Commissioner for all the evils currently extant in our public school system. The problems facing us are long-standing, many, complex, and difficult. It is not reasonable to attribute all of those as being a shortcoming of a single individual. I am reluctant, therefore, to conclude that every single problem existing is a piece of evidence which can be used to undermine the Commissioner's position. On the other hand, the Commissioner's apologists have essentially made only two supporting arguments, at least as far as I have been able to determine. They claim that, first, continuity in the office is important and, second, that the Governor's wishes should be followed. Frankly, Senators, I believe both of these "reasons" are absurd. I am surprised that any thinking individual would use them as a reason why an individual should be reappointed. By the same logic, anyone who has ever been appointed Commissioner should be reappointed thereby calling into question the idea of ever having a length of term of office. It also suggests that there is no need for this Committee to meet. If the Governor's wishes are to, in every case, be followed, Senate confirmation is obviated.

I have seen little on the record of a positive nature that would support the Commissioner's reappointment. Surely, in anyone's term of office, some positive accomplishment will be attained and I presume Commissioner Burke is no exception. There are, no doubt, areas of achievement of which I am unaware. However, I submit that it is incumbent upon one who would seek a public office to present compelling evidence as to why that office should be his or hers.

I would like to draw an analogy between this very important office and the awarding of tenure to a faculty member. Both are appointments of importance, extend over a significant period of time, incur substantial debt for the taxpayers, and affect the very sensitive issue of public education. During many deliberations on the tenure question, members of the legislature have advised me, as an educational administrator, that appointment to tenure is a crucial decision. They have suggested that such an appointment requires compelling evidence of ability to make significant contributions over an extended period of time and that absence of such evidence is adequate reason to withhold the appointment. I believe that the same thing should apply to public offices such as the one you are considering, and I further believe that there is absence of such evidence. But my concern is not confined to the lack of affirmative evidence supporting the Commissioner's reappointment.

I note several rather important problems which have been avoided or mishandled and, when these are taken collectively, they seem to suggest a pattern on the Commissioner's part of pusillanimous wavering in the face of controversy. With all due trepidation concerning the source, I am appalled by what

I read in the newspaper account of Commissioner Burke's testimony as to why he should be reappointed. If he was quoted correctly, he said he avoided taking entrenched philosophical positions. That is an euphanism to cover an interest to avoid blame by not advocating a position. No one will disagree that all sides of controversial issues should be heard before decision but there comes a time when decisions must be made. Where is courage and educational leadership? Is there no position that is sacred? Is there no standard that will not be vacated when the pressure is applied? Who will stand up for the children if not the Commissioner of Education?

During 1972 and 1973, the Joint Education Committee between the two State Boards of Education met dozens of times with staff from both departments. The subject of those meetings was the very difficult issue of the relationship between vocational schools and community colleges, a matter which has never been fully resolved to any way of thinking and which is admittedly a difficult subject with which to grapple. Risks are involved and some had been taken. I have noted, however, that since Commissioner Burke appeared on the scene (and I was still in the Department of Higher Education until late 1975), there was a marked diminution in his department's responsiveness to the need for these joint meetings on that very difficult issue. This occurred notwithstanding the fact that several members of his staff were very much attuned to the need to address and resolve the issue.

More recently, the Department of Education instituted statewide testing of students in certain elementary and secondary grades. The first round of such tests, not surprisingly, showed

glaring deficiencies in the basic skills of our students across the State. A similar test offered in the following year was significantly modified and watered down so that the results seemed to show an improvement from one year to the next.

In point of fact, it seems that no such improvement occurred and that our Commissioner seems only to be concerned with the appearance of educational reform and has abandoned the issue of advancing educational excellence. I, by the way, am not one of those who blames Commissioner Burke for the current situation. This problem had its origins in matters preceding Commissioner Burke's arrival here. I am less concerned about the current state of affairs, bad as that may be, than I am about the fact that our Commissioner lacks the courage to do anything about it.

On a similar issue, the standards for certification of bilingual teachers throughout the State was called into question because of an apparent inability of many of the candidates to achieve the standard which had been previously set. Faced with this admittedly rather sticky problem, the Commissioner's response was to lower the standards.

There are three elements which require close attention when designing an educational program. The starting point which will be defined by the prospective students' ability and prior experience; the program which encompasses content, method, and time; and the exit point which represents the objective to be reached. When a program fails, the easy solution, but not the right one, is to modify the first or the third element. But a society which prides itself on equal opportunity cannot ignore those who don't reach some arbitrary starting point. So we are left with the

only easy way out being the vitiation of academic standards.

It is my firm belief, Senators, that educational standards should be established taking into consideration only the objectives of the educational program under consideration. Once those standards are established, they should be reviewed only when there is reason to believe that a different set will be more likely to lead to attainment of the objectives. What we have witnessed time and time again, and I do not contend that Commissioner Burke is the only educator guilty of this flaw, is that the standard is modified based not on the objectives to be reached but based upon the proportion of students who meet the standards. I contend that a failure to meet a standard should be met by modification of the program or by increased motivation. Failure to reach a standard even by 100 percent of those who attempt it is not cause to modify the standard itself. If one were placed in a society which continually lowered its standards based solely on the proportion of people who achieve those standards, one would expect a continuing decline in the output of that society. If a standard were difficult, an individual need not worry, it would soon be lowered. An individual need only wait and an easier standard will be available. Motivation will falter and the society's progress will diminish. I do not know whether it is the only explanation for the continuing decline in our high school graduates' ability to read, write, and cipher, but I do believe this consideration is a significant contributing factor. I further believe that no correction of the present decline is possible until we bring a halt to the decline in standards. Standards must be established for sound educational reasons and they must be held firm.

Our present Commissioner has a track record indicating he

is not willing to hold standards. I am very much aware that students possessing the high school diploma who apply to community colleges for admission do not in general read and write at the appropriate level. In fact, nearly 40 percent of the New Jersey high school graduates who apply for community college admission read and write below the 10th grade level! I presume we can soon expect a redefinition of what constitutes the graduation level so that we can point with pride to the proportion who possess the requisite level. Meanwhile, printed material becomes obsolete because no one reads.

I cannot stress enough the inevitable consequences to a complex society such as ours if we cannot educate our citizenry in the most rudimentary communicative skills. I am unfortunately forced to the conclusion that our present Commissioner has not and will not make a significant contribution toward that goal.

In closing, it is important to note the general public's attitude about the issue of standards. I have been pushed overwhelmingly to the conclusion that the public supports the notion of firm academic standards. While instituting some rather stern disciplinary measures at my present institution, I felt trepidation from anticipated adverse reactions. I found, instead, overwhelming support even in some instances among students who themselves were suspended. I believe this points very clearly to the growing alarm with which the general public views the decline in basic skills of our high school graduates. And yet, our Education Department, rather than lead the fight for standards, seems to be resisting their imposition, reluctantly agreeing only after pressure is applied from elsewhere. I have been involved in State government enough to become at least marginally aware of

the political issues which often surround decisions such as the reappointment of the Commissioner. I know that the Governor may frequently make trade-offs with various legislators in order to gather a vote on unrelated issues which each considers critical. I am concerned about the danger that issues other than academic excellence may find themselves intertwined in the question of whether Commissioner Burke should be reappointed. I urge you to make this decision based solely on educational issues and what you believe to be the action that is most likely to improve the quality of our schools. If you do that, I believe you will vote to recommend to the Senate as a whole that they not confirm the Governor's nomination of Commissioner Burke to a second term in office.

Thank you.

SENATOR GREENBERG: Thank you. Senator Hamilton.

SENATOR HAMILTON: I have just one question, Mr. Chairman. Mr. Wright - Doctor Wright - I find myself in agreement with many of the things you say here. Yet, you have been very fair in those things that you do lay at the Commissioner's door and those things that you do not.

Where you talk about a system whereby if people don't measure up we lower the standards so they can measure up, you haven't said, as you have in many other areas, that this is not to be laid at the Commissioner's door. Yet, I feel that - very strongly - while you criticize him for not reversing that, you haven't really suggested what there was before him that he could have or should have done to reverse what I find to be an alarming trend and tendency, and which you have articulated very well. That is one where you didn't say, "Hey, this is something that is his fault to begin with." And, you haven't really said how he has failed to contribute to an alleviation of that problem.

MR. WRIGHT: Well, I certainly agree, Senator. I think it is a tragedy. I will have to say it is a national tragedy. It is occurring all across the country.

SENATOR HAMILTON: I concur.

MR. WRIGHT: And, for that reason, I won't solely attribute the problem to Commissioner Burke. Certainly, there are others who have contributed to this problem. But, the very simple answer to your question is he has done nothing to establish standards, until quite recently, when people all across the state, including professional educators and the public at large have been crying out on this issue. Now, he is beginning to say that maybe standards make some sense. But, where are those standards? He resisted the notion of testing. He resisted the notion of statewide standards for graduation.

Frankly, on the issue of whether it should be a statewide standard or not, I am not sure, but certainly there are things that the Commissioner of Education can do to implement statewide standards, or any educational academic standard, even if he were to say that an educational school system should now establish its own standard and hold it there. I would be less concerned if he were to come out and say that all students graduating from high school must read and write at the 9th grade level. Even if he would say that, then in my institution, when we receive the students, we can throw in the developmental program, which we must do - we have a very large developmental program, as every community college in the state does.

SENATOR HAMILTON: That is what the statute says and that is what concerns me. What happens when you get somebody who has been through 11 years of a system that hasn't required them to measure up and now you are going to make them

the whipping guys for the system and say, "Well, we have now changed the rules and you have to graduate." I agree with you, that we shouldn't have a 9th grade performance standard for graduation, but what do you do with the people? Fifteen years from now, I can buy what you say, but what do you do in the interim?

MR. WRIGHT: I think they are two different questions, as you correctly point out. There is a long-term answer and there is an intermediate solution. The intermediate solution is we have to have a developmental program for those students who have not learned. My institution has one. There are a lot of students who are not going from high school to any other institution and they are not being served. So, I think you have to do something for those students.

But, unless we halt the decline, which is continuing - up until this very day it is continuing; it is getting worse every year - the problem is going to get worse and worse in the future. And, the entire essence of my testimony here is that as long as we have this Commissioner, I am confident it is going to continue to decline. Maybe confident isn't the right word.

SENATOR HAMILTON: Thank you, Doctor. I think we are generally aware of what you are trying to do in Passaic County.

SENATOR GREENBERG: Senator Gagliano.

SENATOR GAGLIANO: No questions. It was an excellent statement.

MR. WRIGHT: Thank you.

SENATOR GREENBERG: Sandy Sapello. Ms. Sapello, I have your statement, which is quite lengthy. I do not know what it says; I haven't had an opportunity to read it. But, on behalf of the Committee and myself, I would ask you, please, since this will be incorporated into the transcript and available not only for the Judiciary Committee members here, and not here, but also for the other Senators, can you please summarize it for us?

S A N D Y S A P E L L O: Well, I appreciate the question and I realize it is a very lengthy statement. What I would appreciate is, being able to begin to read it and then if you feel--

SENATOR GREENBERG: Well, I don't want to cut you off before you have made your point. That is my problem. I don't know where you are going and I don't know where your points are and I would like you to hit them instead of reading material that may not be as significant as other material that you will not have an opportunity to give us, if you are in a position to do that.

MS. SAPELLO: I feel that the best way for me to hit the points that I want to make is to begin to read.

SENATOR GREENBERG: Well, let me tell you that we are not going to have time for you to read the entire statement. I therefore suggest that if you can just kind of glance through it and pick out the areas, I would appreciate it.

MS. SAPELLO: Several members of this Committee continually asked for direct correlation between the Commissioner's reappointment, and the Commissioner's job, and the Commissioner's responsibilities, and the things that are happening in education in the state. I think that this presentation provides that and I would like to present it in the way that it is prepared.

SENATOR GREENBERG: Okay, with the admonition that I have given you, if you want to read it despite all that I have said, you can go ahead and start, but we are going to reach a point where I am going to have to say stop - okay?

MS. SAPELLO: Many people have spoken to this Committee about the problems in their school districts and the question has been raised by the members of the Committee, "What do local conditions have to do with the reappointment of the

Commissioner of Education? After all, we cannot hold him personally and solely responsible for the sum total of problems in education today. After all, parents, community residents, social ills of poverty, hunger, unemployment, racial tensions, and discrimination all influence and help cause the problems in education today.

I would like to quote, as does Commissioner Burke, the goal of a thorough and efficient system of free public schools: "Shall be to provide all children of New Jersey, regardless of socio-economic status or geographic location, the educational opportunity which will prepare them to function politically, economically, and socially in a democratic society." There is no room under the law to excuse the lack of performance of our schools because of outside influences. The law clearly demands equal educational opportunity for all children.

The duties and responsibilities of the Commissioner in this task are spelled out clearly in the law. He must approve basic skills improvement plans; He must direct a comprehensive needs assessment program of all pupils at least every 5 years; He must develop and administer uniform statewide evaluation of each school; He must make an annual report, based on district annual reports and evaluations, describing the condition of education in New Jersey; He must review evaluations and reports and determine which schools have failed to show sufficient progress towards state and local goals and direct them to prepare a remedial plan, approve it and assure its implementation.

SENATOR GREENBERG: Excuse me. I don't see this here and I don't think you mentioned it while I was out - for which I apologize - have you told us whom you represent, if anyone?

MS. SAPELLO: Just myself. I am involved in many educational organizations but I am speaking for myself.

SENATOR GREENBERG: Okay, fine.

MS. SAPELLO: Clearly, the Commissioner has responsibility for improving the conditions in the local school districts by evaluating their compliance with the T & E law, based on Department staff monitoring of the schools and the annual reports submitted by the districts themselves. If local schools and districts are not in compliance, it is the responsibility of the Commissioner.

Local problems are his responsibility because he has failed to provide a sufficient system of uniform statewide monitoring and thwarted the efforts that have been made to implement successfully the system that is in effect.

T & E is a process. This sentence is found in many materials on T & E distributed by the Department. In monitoring T & E, the Department is monitoring a process. The county program coordinators using the monitoring guides provided by the Department check for the presence of the proper steps and procedures in the T & E process.

Despite comments by the Commissioner in an address to the New Jersey School Administrators Conference in November, 1977, that T & E will focus on accountability and results in education rather than process, we find a warning as early as 1974 by Richard Roper, Director of the New Jersey Education Reform Project that while "Defining a thorough and efficient education in process terms, which is the approach taken by the New Jersey Education Department, may serve a useful management function, it nonetheless causes us some concern. It could be imagined that a district received a positive evaluation from the State Department to the effect that it had carried out an effective education process, even though it had failed to achieve adequate student performance."

I would suggest that this is in fact how compensatory education programs

can be found deficient by an independent committee, but all of the processes and proper plans and reports had been completed, filed and approved by the Commissioner. I would suggest that this is why districts were found in compliance with regards to community involvement in goal setting, yet we have two suits filed by community members alleging that there was not proper community involvement in goal setting in their districts.

I would suggest that the emphasis on process is expressed in the extreme in the remarks of the Camden County Superintendent during the Camden school strike. Schools were open but manned by a very small staff and student attendance was poor. The County Superintendent was asked if he could find the schools in non-compliance because of the obvious lack of quality of the programs. He was quoted in one newspaper as saying that as long as the schools were open there was nothing that he could do. He could not judge the quality of the programs.

Illustrative of the emphasis on monitoring process rather than results is a communication on November 17, 1978, from the State T & E Coordinator, William Volk, to county and EIC coordinators: "I would submit that we should question the merits of county school program coordinators placing a value judgment on the worth of local objectives." He also states: "If a district demonstrates sincere efforts in developing means - objectives and standards - to identify students in need with the intent to improve the instructional process, the district should be considered in compliance with the intent of the law and the code.

The law calls for a uniform system of statewide evaluation, yet the Department has instituted different monitoring for high need districts and low need districts. From the State Department of Education, November, 1978, Statement of Policy and Procedures for Monitoring, I quote: "Districts and schools should receive monitoring related to the major areas where applicable, but the number of monitoring visits and the intensity of the monitoring will vary from district to district and from school to school." First and second level monitoring are explained in this memo, adding more confusion and less uniformity.

The Commissioner has failed because he has not found which districts are not showing sufficient progress towards the goals and standards of T & E and he has not required that they submit remedial plans. He has postponed classifications of the schools. The following is a quote from a speech by the Commissioner to the New Jersey National School Public Relations Association, December 1, 1977: "I was never in favor of classifying school districts. . . our plan would assure that a district can be classified as approved if its students have made great strides in improving their minimum basic skills test scores - even if all students have not reached the minimum standard in that district.

"The classification model the Department is proposing also calls for classification to be based on a district's educational plan. This plan is due July 1, 1980 and only districts which have submitted their plan prior to this, or districts which are in obvious violation of the law, will be classified before this date. Meanwhile, we will focus on monitoring districts with a high incidence of deficiencies and technical assistance will be given to these districts."

The law does not call for the Department to give technical assistance. The law calls for the Commissioner to direct such districts to prepare a remedial plan and for him to assure its implementation in a timely and effective manner.

The Commissioner and NJEA were instrumental in amending the statewide standards bill to include interim goals which could result in a district with 40%

of its students failing to meet the standard being approved because it brought that up from 30% the year before.

The Administrative Code called for classifications of districts, but the Commissioner did not classify districts the following year resulting in a law suit which contended that the classification should have started that year. The ruling in the case was that it should have begun that year but that it was too late to do anything about it. The Code was then amended to allow classification to start later.

Section 18A:7A-12 of the law -- "In addition to the annual reports requested by Section 11 of this Act, the State Board shall, 4 years after the effective date of this act" - which would be this July - "make a comprehensive report to the Governor and the Legislature assessing the effectiveness of this act in producing a thorough and efficient system of free public schools. The report shall include an account of the progress of each local school district in meeting the goals, objectives and standards prescribed under sections 6 & 7 of this act, identifying those districts and schools which fail to meet them, and make recommendations, if necessary, for hastening the elimination of any deficiencies."

I would suggest, because of the delaying of the classifications of the schools, and because of the lack of a proper system of evaluating and monitoring the schools, the State Board of Education is probably not in very good shape to do that report.

The Commissioner has failed because he has interpreted the law to allow districts to take a year to establish goals, a year to write objectives and standards, a year to assess needs, a year to write programs and prepare budgets and a year to evaluate their programs. The Commissioner has turned T & E into a five year, long, drawn out, time-consuming, confusing process - not called for in the law or the code. The law calls for a five year review of the state goals, but nowhere does it allow five years for implementation and enforcements of any of its provisions. Annual reports required by each district are set up to allow districts to check which year they are in in the T & E process.

The Commissioner has failed to properly interpret the law through the Administrative Code. The law clearly calls for maximum citizen involvement in decision-making in the local districts. The code includes one direct reference to goals being developed in consultation with "pupils, parents, or guardians of pupils, and other district residents" and three references to communication with parents or guardians and two references to identifying community resources. However, Commissioner Burke chose to include at least twelve references mandating teacher involvement. I quote from an address by the Commissioner to an NJEA staff meeting on T & E June 10, 1976:

"The Code reflects the Department's and my personal commitment to encourage teacher involvement at every step in T & E. Note that every major section . . . from goal setting to evaluation . . . mandates teacher involvement. The typical wording . . . which appears no less than 12 times in the body of the Code . . . refers to a requirement that teachers be consulted in local decision-making." He gives an example and then continues: "I might point out that insertion of this kind of language rests on the Department's interpretation of the law. Chapter 212 itself only speaks of involvement in terms of citizens. Nowhere does it make explicit provisions for teacher involvement. We believed that it should be there, and have held that our belief was broadly consistent with the intent of the legislation. Thus, I am suggesting to you that the mandate for teacher involvement has been firmly built into the Code." Please note that there are many times when the Commissioner has refused to

take action or require something because it is not in the law or the Code.

This was not enough. He also included in directives on implementing T & E sent to the local districts much material on the need for professional involvement in local decision-making, based on their greater knowledge and experience and because "the New Jersey Administrative Code recognizes the importance of the professional educator." But, he wrote that into the Code.

I cannot help but wonder whether the emphasis on teacher involvement was not a direct response to a request from NJEA in their September 9, 1975 statement at a public hearing on S-1516, for "a share in responsibility in educational decision-making. NJEA would welcome the opportunity to make such recommendations that will further delineate that responsibility. We would be interested in providing more explicit prescription of teacher involvement."

The law calls for "each school district to make an annual report of its progress in conforming to the goals, objectives and standards developed pursuant to this act." This report shall include, "c. Information on each school's fiscal operation, including the budget of each school." The Code, however, in 6:8-6.1 (c) 9 calls for "information on each school's fiscal operation including the district's audit report, when submitted, pursuant to law and regulation." Budget reports for each school are included in the law but not in the Code and not in the monitoring guides. Information on program and school budgeting was included in much of the material from the EIC's and the Department to local schools as requirements. Many districts adopted PPBS, a planned program budget system. NJEA, in articles in NJEA Review, criticized PPBS and other budgeting methods that tied program success to budgeting. The Commissioner then responded that the Code does not call for program or school budgeting.

The Commissioner has failed because he and his Department have had the responsibility for approving and monitoring the Basic Skills improvement plans. If the Department's monitoring were properly developed and administered, severe problems in the remedial education programs would not have had to come to the attention of the State Board of Education and the Department of Education through the Minimum Basic Skills Advisory Committee working for six months independent of the Department, but would have been a result of careful and thorough monitoring of the local districts. The Department did not deny any of the criticisms or explain why their own monitoring had not uncovered these problems.

The Commissioner has failed because he has allowed T & E to be misconstrued, confused and abused. The Department developed a T & E logo which they used on materials from the Department and the EIC's to local districts. However, the Department did not copywrite their logo, allowing it to be used by management consultants, systems analysts, or anyone else wishing to promote their materials or services to the local districts, creating unnecessary confusion among the local districts.

SENATOR PARKER: Excuse me ma'am, you have been 20 minutes now. Isn't there any way - you are not even half way through - that you can expedite this?

MS. SAPELLO: No. I get concerned with the need to expedite -- you know, in some cases the need to expedite and not in others. I would like to finish.

SENATOR GREENBERG: If you feel that we have been--

SENATOR PARKER: It is going to be another 20 minutes. Mr. Chairman, I think maybe we ought to put on a limitation. Maybe the Committee ought to discuss it and vote on it because this is the fourth day of hearings and we have

all the testimony before us. I don't want to cut anybody off, but she is reading a statement which we have before us. She has not amplified on any part of it, and it has happened three or four times. I think we ought to put a limitation on the testimony.

SENATOR GREENBERG: Excuse me. The Committee will recess for five minutes. Please stay right there.

(recess)

AFTER RECESS

SENATOR GREENBERG: You will be happy to know that the Committee has decided to let you read, but they requested that you read a little faster.

MS. SAPELLO: I'll buy that.

SENATOR VREELAND: Mr. Chairman, can we ask the witness where she lives?

MS. SAPELLO: I live in Minotola, New Jersey. It is in Atlantic County.

The State Department and the EIC's for two years distributed volumes of materials on T & E. These materials reflect the wording of the original drafts of the Administrative Code which called for "Planning and Evaluation based on individual prescriptions for each child" and "Procedures shall be developed and implemented to assist teaching staff members in identifying and recording the developmental level of each pupil for instruction." Even though the word individual was deleted,

the Code as adopted called for assessing pupil needs to determine pupil attainment of educational objectives. Consistent with what the department and the Commissioner understood to be the intent of the law they distributed through the EIC's elaborate plans for writing objectives and standards for each pupil. For two years districts wrote volumes of behavior objectives specifying exact outcomes of learning measurable by observing student behavior and responses. Procedures and suggested models of T & E planning were distributed by the EIC's containing elaborate and somewhat confusing plans for needs assessments, behavior objectives and standards of pupil progress expressed in percentages. Some districts began complaining about the paperwork and NJEA again published articles critical of behavioral objectives and percentage standards. A program coordinator found a district in non-compliance for using curriculum guides and letter grades as its objectives and standards. The Commissioner was asked to clarify the necessity for individualized objectives and standards. His response was that they cannot be required because they do not specifically appear in the law or the code.

When the Commissioner was criticized for taking the heart out of T & E, he responded that individualized objectives and standards were never required - that some districts had gotten carried away and required too much. Where was the Commissioner for two years? Didn't he know what was going on in his own department? Why do early department materials support the

EIC's, but NJEA quotes the Commissioner in 1978 as saying that "EIC's do not establish policy so they cannot say, "This is how you must do T & E. " (E) (P)

If behavior objectives and percentage standards were never part of T & E, why are there articles in NJEA Review opposing their use? Why are there many articles in Interact defending and explaining behavior objectives and standards? Why did teachers file grievances over excessive paperwork if districts were never told to do all these things? Why are a dozen superintendents quoted in one newspaper article as saying that T & E has taken a sudden change in direction? (Robert Braun Newark Star Ledger, February 12, 1978.) (F) & (G)

Why was there a need for a lengthy and detailed letter to Frank Totten from Commissioner Burke explaining his position on objectives and standards? A letter which ends, "I look forward to an acknowledgement on your part that the content of this letter is consistent with the interpretation of the law and the code by the NJEA." (H)

If nothing else, the explanatory materials that were distributed by the department and the EIC's were confusing and misleading. Whether individualized goals were mandated or not is perhaps less important than the lack of a clear direction from the department.

If the commissioner has failed the local districts in carrying out his specific responsibilities under T & E, he has also failed the local districts in his stands on other important educational issues.

His position on Caps must certainly have caused local districts confusion and concern. In an address to the New Jersey School Boards Association Convention on October 28, 1976, the Commissioner stated, "We all have to recognize that budget caps are a product of citizen concern with the cost of government generally and education specifically. We all have to be responsive to that very legitimate concern. The T & E law is no longer new. The inequities present initially have either been corrected or are in the process of being corrected. I see no overall need to raise caps at this time. The cap next year will be a hard cap - unless it can be overwhelmingly demonstrated that a district will not be able to comply with the T & E law because of highly unusual circumstances, such as an abnormal increase in enrollment."

In March, 1977 the NJEA Review's three page section critical of caps states, "The Commissioner is now under pressure to take a "hard line" on "cap" waivers."

In the May/June 1977 issue of Interact, the Commissioner is quoted as saying, "As the caps are functioning now, they are inconsistent with T & E."

In his December 1, 1977 address to the New Jersey National School Public Relations Association, he states, "The cap law was put together hurriedly, and like anything done in a hurry is not working well. Caps probably served a useful purpose for the first couple of years when we had many districts with enormous surpluses. That's not the case now; however, and I have extreme reservations about continuing the caps as they are now structured."

The number of cap waivers he has granted and the reasons for them have also varied each year. This year we have hard caps again with a cut off at the 65 percentile of spending, with the Commissioner taking such a hard stand that the State Board of Education has reversed his denials in about one third of the appeals.

On the paperwork burden of T & E, he told the NJEA Convention on November 11, 1977, "I have tried on repeated occasions to show that with T & E we have cut the amount of paperwork in half of what it used to be. Only three new forms have been added with T & E. I can say with all truthfulness, that the forms remaining are ones necessary for both local and state accountability. We are also making every effort to show districts how this paperwork burden can be decreased. Hopefully the end result will be received favorably by you."

In his December 1, 1977 speech to the New Jersey National School Public Relations Association, he states, "Paperwork is the price you have to pay for local control..The only way the T & E system can work is through communicatin - massive communication. If the community understands this, they'll understand the need for paperwork."

The Commissioner's role in the controversy over the extension of the deadlines for bilingual teachers to meet certification standards has been explained in other testimony, I would just like to add that when this issue was discussed at the April, 1978 State Board of Education meeting, NJEA was obviously prepared for the recommendation from the Commissioner regarding extending the deadlines or lowering the standards for certification. However, representatives of several groups representing the interests of bilingual students, including I believe a State Board Committee, expressed shock and dismay that they had had only momentary notice as to the proposed changes. Through many of these issues we can be thankful for consciencious and alert State Board members who have been able to find reasonable solutions to many of the controversial problems that have been before them.

On the right of teachers to strike, the Commissioner stated to NJEA in November, 1975 that he believed that teachers had the right to strike, There was immediate reaction to this on the part of some legislators and the Commissioner held a press

conference and explained that he believed that teachers had the right to strike, "but not in New Jersey, and not at this time." The School Board's Association defeated by 73 to 58 a motion to censure the Commissioner for his position. In a letter to the School Board's Association he stated, "I have not and do not advocate the legislative right of teachers to strike." Later when asked if he would support a bill to give teachers the right to strike, he responded, "I don't know"?

You have already heard testimony on the Commissioner's change in position on the inclusion of pupil progress and growth in the evaluation of tenured teaching staff members; that he introduced the concept, changed his position on it, and wrote guidelines which virtually eliminated it.

One other issue on which the Commissioner has completely reversed himself is the relicensing of teachers. In March 1976 he testified before the Appropriations committee and presented a plan for retesting and relicensing of teachers. At the same time a State Department official announced that the state would get tough with incompetent teachers. After her plan was submitted to the Commissioner and drew heavy criticism from NJEA, the Commissioner left a statement at the October 1976 State Board meeting that he did not recommend new standards at that time because they would create anxiety and insecurity among teachers.

Since former Commissioner Carl Marburger was consistent and firm in his position on the solutions to problems in education, highly critical of teachers, and allegedly not reappointed because of political pressures from NJEA, and Commissioner Burke, who has been accused of changing his views too frequently, is now in possible danger of not being reappointed, I would suggest that a larger issue than the reappointment of one man might be of concern to the Legislature. How can the Commissioner's job be taken out of the realm of political influence? Can the Commissioner be appointed by the State Board of Education instead of the Governor? Can he be restricted to one term, so that renomination plays no part in his role? Can some way be found to free a Commissioner to function as a leader in the education of our children? Can a way be found to free a Commissioner from having to worry that he paid a heavy political price for his position on an issue?

SENATOR GREENBERG: Thank you. Senator Gagliano.

SENATOR GAGLIANO: No questions. It was an excellent statement.

SENATOR GREENBERG: Senator Vreeland.

SENATOR VREELAND: I have no questions. I would say there was a lot of work and effort put into this statement. Did you do it?

MS. SAPELLO: Yes.

SENATOR VREELAND: Excellent.

SENATOR HAMILTON: I just want to go with what Senator Vreeland said. I have no questions, Mr. Chairman.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: I just want to reaffirm what the Senators said - I appreciate your time.

MS. SAPELLO: My answer to one of the questions you asked earlier about why the Senate Education Committee and the Assembly Education Committee members might not see Commissioner Burke in the same light that we do is, it is only that they are seeing him and his job through the reports that he gives them and we are seeing him through what is happening.

SENATOR GREENBERG: Thank you. Robert Woodford.

ROBERT WOODFORD: Senator Greenberg, members of the Committee, I am Robert Woodford, Vice President of the New Jersey Business and Industry Association. The statement that I will be reading to you is the result of a meeting on March 19th of the Committee on Education of our Association, which represents the 13,000 business members of the Association. Those on the Committee have been involved in the T & E process, the review process and attending meetings and submitting statements, I might add, to the State Board and the Legislature on questions of the management of the system for some 10 years. We are very much concerned, less with the personality question - the pros and cons - here as with the process of appointment and some of the problems that arise from the present process of appointment.

The system of education governance obviously involves the Legislature and the Governor as primary actors, but the State Board of Education is the day-to-day policy-maker under which the Commissioner of Education is the primary administrative agent in carrying out those policies.

Within this structure for the development and implementation of state educational policy, appointment of the Commissioner by the Governor, in our judgment, creates serious problems which play a major role in the present controversy. Accountability of the Commissioner to the State Board of Education is undercut because the Board lacks the power to appoint and to reappoint. The Commissioner,

on the other hand, lacks the degree of insulation from political pressure which appointment by the Board would provide. He is asked to serve two masters, while being subject to continual and conflicting pressures which ultimately limit his freedom to make sound educational decisions.

Despite the five year term of the Education Commissioner, designed to prevent the appointment and reappointment from becoming a political issue, the fact that the Governor is responsible for the appointment or reappointment increases the need for a Commissioner to constantly weigh the political consequences of his actions. It might be added in that respect that any Commissioner following the Marlburger incident, a reappointment which was not approved by the Senate, would be highly sensitive to political pressures and to some of the major political actors on the stage, like the New Jersey Education Association.

Dr. Burke's performance and testimony before you concerning that performance, reflects the very political nature of the situation he finds himself in. Some of those favoring Dr. Burke's reappointment have praised his willingness to recognize and respond to pressures exerted by divergent interest groups. Those opposing reappointment criticize him for the same actions and conclude that he lacks a strong sense of personal commitment to educational reform.

We submit that Dr. Burke's actions and current difficulties are partly attributable to the present system of appointment. A preferable alternative would be the selection and appointment of the Commissioner by the State Board of Education in the same manner in which the Board of Higher Education selects a Chancellor. It would follow the lines of good management procedure that is used in business organizations and by any other organization which had a policymaking board. To do otherwise, is to undermine the governing board's authority and its ability to effectuate policies.

In fact, New Jersey's failure to follow this proven model of management has resulted in a poor linkage between State educational policy-making and policy implementation. For example, the Board spent 18 months in the development of a regulation governing the evaluation of tenured teaching staff members. One major point of contention, decided only after continual input by professional groups and the public, was whether the evaluation process should attempt to relate pupil progress to the teacher's performance. The regulation finally adopted requires that the annual written performance report on a staff member shall provide a summary of available indicators of pupil progress - that is, all formal and informal assessment procedures used by the school - and the student's growth in these respects, and how these indicators relate to the performance of the individual teaching staff member.

Following adoption of the regulations, guidelines were issued to local school districts by the Commissioner. While various private organizations apparently had an opportunity to review the contents of the guidelines before their release, the same opportunity was not extended to the State Board of Education. In fact, members of the Board were angered when they concluded that the guidelines were at variance with the regulation in important particulars regarding the use of pupil performance in evaluating a teacher's performance. That is the very issue which had been a focal point of the Board's 18 months of discussion.

The present system of appointment invites a Commissioner to act independently of the Board, yet it sacrifices the degree of insulation from political pressure which appointment by the Board could afford. Therefore, we urge that you address the larger issue involved in this appointment and recommend legislation providing for appointment of the Commissioner by the State Board of Education - a policy

which the Board itself has supported. This would include the power to remove a Commissioner for cause.

Even if this change in the method of appointment does not take effect until 1984, it will provide the Board with needed policy leverage over the Commissioner. It would provide the Commissioner, in turn, with a situation in which he is no longer serving two masters. He must concentrate then on serving the Board of Education to their satisfaction.

Secondly, in the interim, we would urge that you seek out the advice of the Board on the present Department and that you give great weight to the views of Board members in reaching your own decision. Thank you very much.

SENATOR GREENBERG: Thank you. I think what I would do is to send a copy of this statement, in addition to incorporating it in the minutes of this hearing, to the Committee on Education in the Senate and the Committee on Education in the Assembly for their consideration as well.

Senator Gagliano.

SENATOR GAGLIANO: Just a comment with respect to Mr. Woodford's statement. He suggested we seek out the advice of the State Board of Education with respect to this appointment. I think, Mr. Chairman, we discussed that in camera - we have discussed it in the past. Maybe the people would like to know what we do plan to do.

SENATOR GREENBERG: I announced it at the last meeting. Perhaps you weren't present.

SENATOR GAGLIANO: That's right, I wasn't.

SENATOR GREENBERG: The Committee staff has been directed to call Mr. Ricci and determine whether or not any members wish to appear, testify, give statements in public or in camera, etc. We will get a report on that.

SENATOR GAGLIANO: Okay. Thank you. No questions.

MR. WOODFORD: There is, Senator, an understandable reluctance on the part of Board members who may well serve with Commissioner Burke for another five years to be in a position, publicly, to say anything that might be negative about the Commissioner. I don't know whether there is any way in which, privately, you can get the views of the members, given the Sunshine Act and other procedures. There is a very difficult situation there in terms of eliciting their opinions.

SENATOR GAGLIANO: Well, I think the Chairman has indicated that they could talk to us in chamber, so to speak - in executive session. So, if they want to come forward, we could do it that way.

SENATOR GREENBERG: Senator Vreeland.

SENATOR VREELAND: Well I would just like to ask a question about the method of appointing a new Commissioner. As you outlined in here, it would be by the State Board of Education making a decision. Would that be with the concurrence of the Governor?

And, related to that, how could you do that -- by legislation, or would that have to be an amendment to the Constitution?

MR. WOODFORD: That would have to be by legislation. The Constitution, I think, only provides for two of the cabinet officers; the others are by legislation.

But, on the question of whether it would be with the approval of the Governor, no, I would think the Governor has sufficient power in appointing the members of the Board to select responsible people. We have, for example, on our local boards of education this as our system of selection -- where the board selects the principal administrator and there is no further recourse beyond that board.

SENATOR VREELAND: But how about if it were, as you outlined it, done by the State Board of Education? How about the concurrence of the Senate, as they have to concur now with the appointments of the Governor?

SENATOR GREENBERG: I must warn you; you are in a very dangerous area.

MR. WOODFORD: I understand that. I must admit to some mixed feelings on this. I think to the extent that you want that Commissioner to be responsive to educational needs, as defined by the State Board of Education, it might be desirable that the State Board of Education do the appointing exclusively. However, I understand the pros and cons of that in terms of the chance to review what is a delegated authority. It does reintroduce certain political influences, but they are more diffuse. I really think this is one I would have to wrestle with a good deal longer before I could say, yes, it ought to be retained.

SENATOR VREELAND: Thank you, Mr. Chairman.

SENATOR HAMILTON: Mr. Woodford, while not subscribing necessarily to the bottom line on your suggestion, I think the idea that we look at the present method of appointment is an appropriate exercise for the Legislature, not necessarily this Committee -- but perhaps this Committee -- to do. I would note that the issue was raised in a slightly different way, but equally effectively, by the last paragraph that Ms. Sapello didn't read to us in her statement. I think it is something we ought to look at and I thank you for raising that point for us.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Thank you, sir. Ernest Gilbert.

E R N E S T E. G I L B E R T: My name is Ernest Gilbert of 100 Melville Lane, Willingboro, New Jersey. I am the Director of the Professional Racial Equality Support Services.

SENATOR GREENBERG: Would you explain to us what that organization is?

MR. GILBERT: It is a service organization designed to bring about greater effective uniformity in the way our laws are administered, our education system works, and the way executive officers and legislators implement the law.

SENATOR GREENBERG: Is that a profit or non-profit organization?

MR. GILBERT: It is a non-profit organization.

SENATOR GREENBERG: And how is it funded?

MR. GILBERT: It is funded by whatever donations that we get in terms of the little booklets that we put out. But, at the moment, it is primarily being funded by the members who are working and we have not received, as yet, any major funds.

SENATOR GREENBERG: How old is the organization?

MR. GILBERT: Three years old.

SENATOR GREENBERG: I notice another very lengthy statement in very small print. Do you intend to read this?

MR. GILBERT: Yes, I do.

SENATOR GREENBERG: I am sorry, but we are not going to have time for you to read this statement to us. I don't even know what it says. But I am very interested in it and I can represent to you that it will become a part of the record. I invite you to summarize it for us if you can.

MR. GILBERT: I will try. However, I would like the privilege of entering what I have to say in the record.

SENATOR GREENBERG: Every document that you have given to us, including the statement, in toto, will be transcribed and become a part of the record and available to all Senators, including those on this Committee.

MR. GILBERT: Thank you. May I proceed?

SENATOR GREENBERG: Yes.

MR. GILBERT: It is usually customary, in a situation such as this, for one to declare whether or not he is for or against the issue. However, this inquiry raises two very important questions, one of which is: What kind of Commissioner do we need? The other is whether or not the present Commissioner should or should not be appointed; and, if not, why? I would like to feel as though I am addressing the first question, but I recognize that I cannot do that without addressing the second one. Since this inquiry is being made with a view to grant such unusual powers, I cannot allow myself to be swayed by my feelings for the individual, although I must admit that I am in empathy with anyone whose professional effectiveness is being measured by anything resembling an "evaluation" as the word is used in education. The empathy springs from the knowledge I have gained about the term since entering the education field; and, it is quite different from what I thought it meant, having worked in industry for nearly two decades.

Knowing how the evaluation process works in the field of education, I wonder if the evaluation process in the hands of a Committee of the Legislature might prove more meaningful. I am appearing in the hope that it might.

There is an admonition used in industry which advises that: "One should not become involved in the evaluation of one's superior unless one is ready to assume

his or her superior's position or change professions." This admonition is more often revered by those who reach the "top" to a greater extent than by those who, in the words of a great American, "had rather be right than President". Since I am recognized more as a proponent for the "right" than I am for talents or abilities which might enable me to reach high positions of great responsibility, here I am.

I revere those principles which might be considered "fundamental" or "self-evident" or in a legal sense "prima facie". I rank these principles according to levels and make decisions on the basis of same. Whenever one principle is discordant with another, the principle from the higher authority is considered "paramount", rather than the one that is more convenient or popular. I expect others to do the same. It has been my experience that this is not the manner in which the Commissioner of Education exercises the discretionary powers granted him.

Such experience has afforded me first hand knowledge of the thought patterns of the Commissioner and his failure to be guided by fundamental principles and, in some instances, common sense. Although there is an obvious philosophy behind his actions and decisions, it is my feeling that his basic philosophy is discordant with the expressed legislative intent and the spirit of the laws of the State of New Jersey.

I am aware of the fact that by nature of his title - he is in a better position to have his opinions valued than I am. However, I must rely upon two words to give my presentation credibility and leave the rest to you. These words are "reliability" and "validity". I will attempt to remind you of how these words are applied in situations such as this:

1. If that presented can be shown to exist frequently enough with the same results, it must be considered "reliable".
2. If the following questions may be answered in the affirmative, be the argument for or against, the argument is "valid". The questions are:
 - a) Is it being demonstrated that the Commissioner has/has not done what is required by the regulatory legislation of the State of New Jersey?
 - b) Is it being demonstrated that the Commissioner has/has not done ALL of what is required of him by regulatory legislation of the State of New Jersey?
 - c) Is it being demonstrated that the Commissioner has/has not done NOTHING BUT what is required of him by regulatory legislation of the State of New Jersey?

I will attempt to demonstrate that the Commissioner of Education has not done what is required, all of what is required, and nothing but what is required during the last five years or his term. I do not profess to know WHY it is that he has not done what really should have been done neither do I intend to pretend to know the nature of all of the forces which might have influenced him during his term of office. I only know that to the extent being discussed herein, he has not demonstrated the capacity to understand the dynamics of a system as complex as the Educational System of the State of New Jersey, and has said as much in specific terms in his formal decision, which I will demonstrate.

It would be too difficult and time consuming for one person to attempt to determine all of the areas of "failure" on the part of the Commissioner so I will focus upon the following:

1. Has the Commissioner made certain that the statutes and the New Jersey Administrative Code are being followed by those with the responsibility of issuing certificates to persons wishing to teach in the public schools of New Jersey?
2. Has the Commissioner demonstrated that he understands the meaning of "ministerial" as it is applied to the agencies working under his leadership?
3. Has the Commissioner shown that he understands the effects of having certified teachers to teach, on a high school level, courses they have never had themselves?
4. Has the Commissioner shown that he understands that people have rights which must be enforced even when it is not convenient to do so?
5. Has the Commissioner, to wit, sacrificed the quality of teacher preparedness to gain more administrative "flexibility"?
6. Has the Commissioner attempted to exercise powers which he has been made to believe he has by formal opinions of the Attorney General and the willingness of Courts to allow his decisions to stand rather than be guided by the statutes and the Administrative Code?
7. Can it be shown that the manner in which teachers are being certified operate to deny the students of this State an equal educational opportunity to obtain a "thorough and efficient education" as required by law?
8. To what extent does the Commissioner weigh the facts versus assuming falsely what he does not have before him to the detriment of developing a system of "fair" and "equitable" treatment of the issues presented to him?
9. Do all of the above operate to give the public a false impression of what it can expect to get for the students of this State?
10. Do the statistics presented to the State legislature, such as Grade Point Averages, Rank in Class, etc. give a false impression of the effectiveness of our school?

All of these questions can be answered using as few as three of his decisions. There is no telling what additional research might reveal.

An analysis of cases used as examples in this issue requires a thorough understanding of certain terms, too often heard but most people do not understand. Even the courts of this State recognize this lack of understanding of many of the terms at issue. Consequently, more and more discretionary power has been granted the Commissioner by operation of courts allowing his decisions to "stand" than has been granted him by the legislature. It should be noted that there is a basic principle of government: "Courts do not legislate." which it would appear has been forgotten along the way. The results are, in this instance:

1. Formal opinions from the Attorney Generals Office and court precedences are being used to circumvent regulatory legislation by the handing down of inept Judgements and refusal to even hear certain issues.
2. This creates a financial hardship on the public and an issue becomes res judicata if not pursued and used as a precedence in subsequent cases.
3. The problems are not solved and more and more tax dollars are spent looking for answers when the answers are already there in bold print, but not being followed.

While working in industry, up to six years ago, I learned how buzz words are used. Buzz words are words or phrases which should trigger a certain thought pattern in a person who is knowledgeable in his/her field. Important buzz words used herein are:

- | | |
|-------------------------------------|-------------------------------------|
| 1. The statutes | 21. Public Law 212 |
| 2. The Administrative Code | 11. Equal employment opportunity |
| 3. Legislative intent | 12. Affirmative action |
| 4. Separation of powers | 13. Legal opinions |
| 5. Administrative prerogative | 14. Impact |
| 6. Civil rights | 15. Group dynamics |
| 7. Quasi-judicial | 16. Ministerial agencies |
| 8. Thorough and efficient education | 17. Reasonable |
| 9. Equal educational opportunity | 18. Preferential treatment |
| 10. Teacher certification | 19. Discrimination |
| | 20. Exercising discretionary powers |
| | 22. Specific subject |
| | 23. Comprehensive subject |
| | 24. ultra vires |
| | 25. res judicata |
| | 26. Formal opinion |
| | 27. Grade point Average |
| | 28. Rank-in-class |
| | 29. plenary power |
| | 30. appropriate |

Persons with these buzz words as active parts of their vocabulary may appreciate the message I bring and the pamphlets I have written. Others will not understand the gravity of the educational situation perceived.

There is general consensus that the State legislature has plenary power to carry out the education function of the State. Such power is subject, only, to the restrictions imposed by the constitution. The legislature sets the criterion for the exercise of authority, delegates ministerial duties to agencies and/or individuals as it deems necessary. However, there is concern as to whether the conceptual power of the State legislature is used inappropriately, as well as, arbitrarily. Apparently, there is a lack of respect for the fundamental principle of government in the United States, that there must be separation of powers if our system of government is to work. When one branch divests itself of power and/or delegates its power to another branch, the system fails and the public becomes victimized by such failure.

Such appears to be the case in the State of New Jersey, as the courts allow the Commissioner of Education to use broader discretionary powers. He tends to orient his decisions on court precedences and dictum to a greater extent than upon the statutes and the Administrative Code, which he, as Chief Education Officer, has an obligation to implement.

Case I:*

The issues as I view them might be summarized as follows:

1. A qualified applicant for a certificate, applied for same and was denied the certificate applied for.
2. A different certificate was issued which would allow more "flexibility" on the local administrative level.
3. The certificate issued placed the applicant in the position of teaching a specific subject with a certificate designed for teachers who teach comprehensive subjects and need less training in the specific subject field.
4. The decision to issue such a certificate was based upon rule of the ministerial agency which, by operation of law, has no powers to make rules but must function under the rules made for it. (p. 25)
5. This practice of the ministerial agency has resulted in the widespread certification of teachers to teach courses which they have not taken themselves to the detriment of student achievement.
6. The action of the ministerial agency placed the applicant in a position of teaching the subject he was hired to teach as an ultra vires act, which is clearly discordant with the statutes and the Administrative Code.
7. The applicant filed an appeal against the certificate issuing agency, which the Commissioner was asked to "Hear and Determine", but refused to "Hear".

*Ernest E. Gilbert v. New Jersey State Board of Examiners, the Bureau of Teacher Education and Academic Credentials, Division of Field Services

The Commissioner granted summary judgement to the respondents on the following bases:

"Herein petitioner, having been issued a comprehensive science certificate taught, at the direction of the Board and its administrators, pupils in both the physical science and biological science fields. In turn, these pupils were assigned grades and credits upon which they have the right to rely for purposes of employment and entrance to advanced educational opportunities. Their credit and standing in relation to graduation and issuance of a diploma will not be clouded by rescission of petitioner's comprehensive science certificate."

This statement is so far from the issue that it does not merit even being called "ridiculous". How can such a statement have merit when one considers that five other teachers from the same school district signed affidavits that they were placed in a position to teach courses that they have never taken themselves by an unpublished policy of a ministerial agencies? The Commissioner did not even consider that if in fact the teaching of a specific subject cannot be taught with a comprehensive subject field certificate, then the teaching of the specific subject is being done as an ultra vires act which he has the responsibility to correct.

The Commissioner demonstrated that he did not understand the meaning of "ministerial" as it is applied to agencies by the following statement:

"The Commissioner finds as appropriate and reasonable the rule of respondents that the most comprehensive certificate for which a teacher is eligible shall be issued. The Commissioner does not perceive, as petitioner suggests, any demeaning aspect to that issuance as compared to the issuance of multiple specific subject field certificates."

This statement was made without regard for the fact that the Code states:

"Each teaching endorsement is required for the corresponding teaching assignment." (N.J.A.C. 6:11-6.2a) (p. 25)

The Commissioner failed to recognize that a rule made by a ministerial agency no matter how well intended, can neither be "appropriate" nor "reasonable"

It is a well known principle of law that ministerial agencies cannot make rules. Neither can they refuse to carry out their ministerial function, arbitrarily. If an applicant for a certificate meets the standards published for that certificate, the agency cannot refuse to grant it. Yet, the Commissioner stated that the rule of the agency was proper. There is no doubt that the Commissioner either does not understand the basic principles to be used in the exercising of discretionary powers or he has taken, what might have appeared to be, the path of least resistance.

By the Commissioner's own admission, he fails to understand how the thoroughness and efficiency of a teacher is reduced by having so many different teaching assignments that the teacher is not able to do justice to any one. To quote from his decision:

"Petitioner expresses preference that he have fewer courses to teach than the three he is now teaching. Although the preference is deserving of respect, it is not universal among teachers, many of whom prefer a variety of assignments. Nor does the Commissioner find that teaching a combination of courses is contrary to the constitutional concept of a thorough and efficient education."

Yet the Administrative code states that:

"(a) The number and variety of assignments of the teacher and the number of pupils assigned to the teacher shall be sufficiently limited to enable the teacher to make adequate preparation for his responsibilities." (N.J.A.C. 6:27 1.7)

How can one conclude that the Commissioner is following the lead set for him by regulatory legislator? I am of the opinion that he is not, nor are those who are in the State Department of Education who should know how to advise him. He and the department function in form but not in fact.

It would appear that the Commissioner would recognize that the abuse of discretionary power relates to more "flexibility" delegated to, what should be ministerial functions. Such abuse is excessive in the field of Education. However, by his own admission, he does not.

Any rule that is adopted by a ministerial agency which enables one qualified applicant for a certificate to receive it but another who is even more qualified than the first, to be denied it on its face cannot be fair - with or without supportive evidence. Additionally, any rule which results in one teacher being allowed to teach only those subjects which s/he studied while preparing for the teaching profession, but forces another teacher to teach courses s/he has never taken, cannot be fair. Yet the Commissioner thinks that such a rule can be fair. In the instant case, the Commissioner states the following:

"The Commissioner determines that respondents' rule, as controverted herein, on the issuance of teaching certificates is not only fair, reasonable, and in the best interest of the public school system of this State but has been fairly applied to petitioner..."

Having made such a statement, the Commissioner has acknowledged a complete disregard for the statutes framing both his duty and the ministerial responsibilities of the certificate issuing agency. The responsibilities are succinctly stated in the statutes:

"There shall be a State Board of Examiners, consisting of the Commissioner, ex officio and one assistant commissioner of Education, two presidents of State colleges, one county Superintendent, one superintendent of schools of a Type I district, one superintendent of a Type II district, one high school principal, one elementary school principal one librarian employed by the State or by one of its political subdivisions and four teaching staff members other than a superintendent, principal or librarian, all of whom shall be appointed by the Commissioner with the approval of the State Board"(N.J.S.A. 18A:6-34 and N.J.A.C. 6:11-2.1)

The duties:

"The Board shall grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instructions or educational guidance of pupils in public schools operated by boards of education and such other certificates as it shall be authorized to issue by law, based upon certified scholastic record or upon examination and may revoke same under rules and regulations prescribed by the State Board of Education."(N.J.S.A 18A:6-38 and N.J.A.C. 6:11 - 2.2)

The Commissioner has failed to allow the fullest impact of the Bureau of Teacher Education and Academic Credentials by allowing the rule controverted herein to continue as a teacher certification criteria, as well. While similar bureaus, in other States, are encouraging Masters Degrees, this one is buying administrative "flexibility" and thinking "minimum skills".

The Administrative Code states:

"The Bureau of Teacher Education and Academic Credentials is the focus of the Department's activities in establishing standards for well-prepared teachers, administrators and other personnel for the public schools in New Jersey."

In addition to the concern regarding certification, I am concerned about the the impact of such arbitrariness, capriciousness and lack of insight demonstrated by the Commissioner upon fellow teachers and the students. Especially those of minority and low-economic groups, upon whom the impact is identifiably different.

I have watched good teachers leave education because of the impossible mess being made by administrators, the actions of whom the Commissioner is continually trying to legitimize. Unpublished rules, so-called "flexibility," administrative prerogatives, et cetera, are destroying Public Education because their effects are as kindle being used to burn-out good teachers. They are the causes for teachers feeling that they are nothing but second class citizens. Until accountability starts with the hierarchy of education, there is little need to try to force it upon the classroom teachers, who do more to make the system work than any other group.

In a recent case heard by the Commissioner of Education, the decision handed down, again, demonstrates the basic lack of fairness of his reasoning. In this case he re-emphasized the basic principle that teachers have seniority rights only in the fields of services rendered no matter how many certificates they have. Yet, an administration may utilize a teacher in any certified area it sees fit. In the previous case the Commissioner allowed a rule to stand which would grant administrators flexibility in the scheduling of teachers even to the extent of forcing them to teach courses they have never taken themselves. However when it comes to allowing teachers benefits from having prepared themselves for more than one subject matter field, he denies them said benefits.

Mary Archibald et al v. Newark Board of Education Nov. 11, 1978, #229-78

Yet the statute states: "... a position for which the teacher shall be qualified, as the criterion for whether or not a teacher should maintain seniority.

A similar case was heard by PERC (Public Employees Relations Commission) re-emphasizing the right of boards to utilize a vice principal as a teacher, rather than transfer to the school within the district where there was a vacancy.

The impact of such decisions are identifiably different upon minority teachers as compared to majority teachers. In case #1, only the minority teachers with physical science majors survived the turnover of teachers in that district. There is no significant difference among majority teachers. The Commissioner does not find that "discriminatory".

Minority students are affected differently by the certification rule discussed previously. Minority students find themselves polarized in classes in which the teacher is learning the subject matter along with them. These students find that they are not prepared to take more advanced study as the Commissioner stated was their "right".

Anyone, who has attempted to teach, knows that teaching is not a simple job, that is, if done properly. The Commissioner's experience at Trenton High School should remind him of that. When the facilitators of the education process are too far removed from the site of where learning takes place, they often fail to recognize the difference between conceptual and operational education. If Education is to flourish, in New Jersey, the architects of the system, the State legislature, must take it in hand by insisting that the expressed intent of the legislature be followed by those who are responsible for implementing that intent. The legislature must make certain that the impact of their actions manifest itself in the decisions handed down by the chief executive of the public school system, the Commissioner of Education. The legislature must look into how far down the power it has delegated to the State Board of Education to exercise discretion, is being re-delegated to what should be, simply, ministerial agencies.

Tenure laws are not the major problem, neither will pseudo-evaluation procedures solve the problem. If there is any hope for the back to basics movement, it must be extended to the hierarchy of education. A Commissioner must be appointed who is psychologically prepared to do what is required, all of what is required, and nothing but what is required by the regulatory legislation of the State of New Jersey.

He must be sensitive to the effects of, what might appear to be unrelated activities, upon the teacher-student interaction. He must be on guard against the fraudulent impressions given by corrupt school administrators regarding the achievement level of the students. He must insist that teachers are "well-prepared" as required by law, and that reports on the progress of students be accompanied by how these figures were obtained. This is especially true when students' Grade Point Averages and Rank in Class are reported.

On January 30, 1976, the New Jersey Supreme Court placed the fate of New Jersey Schools back in the hands of the State Legislature. The Court warned that if the State legislature did not do its job, the Supreme Court would do it. A part of that charge to the legislature reads as follows:

"...money is only one of a number of elements that must be studied in giving definition and content to the constitutional promise of a thorough and efficient education ... (A) multitude of other (non-fiscal) factors play a vital role in the educational result - to name a few,

- 1) individual and group disadvantages
- 2) use of compensatory techniques ...
- 3) variation in availability of qualified teachers
- 4) effectiveness in teaching methods and evaluation thereof
- 5) exercise of authority and discipline
- 6) overall goals fixed at the policy level"

The Court even framed the allocation of responsibility to the Commissioner. It stated:

"...the Commissioner is required to review the results of the monitoring and evaluation system ...

... he does not in any sense stand as an arbitrator among local groups ... Directly or indirectly, he is the initiator.

If Public Law 212 is to be the solution to "thorough and efficient" education problems in the State of New Jersey, the legislature must make certain that the Chief Officer, the Commissioner of Education, has his head in the right place and his feet planted firmly in legislative guidelines. If you are in agreement with me regarding the kind of Commissioner we need, what has to be done should be clear. If you do not agree, five years from now, you will be hearing that "thorough and efficient" is still a "dream deferred".

SENATOR VREELAND: I don't have any questions. I would just like to compliment the witness. It was very well done.

SENATOR GAGLIANO: I have no questions.

MR. GILBERT: I wish to thank the Committee.

SENATOR GREENBERG: Instead of going through the list, will the two people who are left and wish to testify please identify themselves.

B A R B A R A W H I T E: I am Barbara White. I do not have a prepared statement. I will be very brief.

SENATOR GREENBERG: Excuse me. Would you identify yourself so we know who are you and whom you represent, if anyone, other than yourself.

MS. WHITE: I am Barbara White, Vice President of the Wall Township Board of Education in Monmouth County. I represent many Board members whom I have spoken to unofficially. I cannot give you their names, but I have been in contact with them. I am also a representative of Mansfield Township Board of Education, Clifton, Lakewood, Freehold Borough, Garwood, Trenton and Dunellen.

SENATOR GREENBERG: I don't understand. You mean you are representing them in an official capacity?

MS. WHITE: I am representing them.

SENATOR GREENBERG: You have no official connection with them, but you are speaking on their behalf?

MS. WHITE: My words will echo their feelings.

SENATOR GREENBERG: As we have done with all other witnesses, tell us, if you can, whether that is by virtue of some official resolution?

MS. WHITE: Yes.

SENATOR GREENBERG: Of all of those boards?

MS. WHITE: Yes.

SENATOR GREENBERG: You don't happen to have copies of those, do you?

MS. WHITE: Yes. They are in your packet.

SENATOR GREENBERG: Thank you.

MS. WHITE: I just want to briefly describe to you where I come from as far as this matter is concerned. Two years ago in March - you will see in your packet - there was a resolution speaking to T&E, describing the problems. As you will read this, you will notice they are the same problems that have been described to you these last four days. This was two years ago that our Board of Education in Wall Township adopted this resolution. Thirty-eight other boards across the State adopted it along with us. We presented this to the School Boards Association. They, in turn, did an in-depth study of the problems that we described in this resolution. I have the booklet here. If you are ever interested in getting some background information, you can get this at the School Boards Association. It is much too big for me to have copied for you. It was given to the Delegates Assembly in June of 1977, specifically talking about the problems in implementing T&E.

We went to the State Board. We went to the Commissioner with this resolution. The people I have heard speak in favor of Burke talked about his sensitivity. There was no sensitivity. There was no response. There was no meeting. There was no saying, "Okay, we understand what you are talking about. We agree. We disagree - whatever." There was nothing.

We continued in our efforts to have a good education in Wall Township and

continued to go to State Board meetings for two years. As one witness said here one of the days, I think we attended more meetings than the Commissioner.

In December, we were a witness to what happened to the guidelines and tenured teacher evaluations. It was the straw that broke education's back, believe me. We became so concerned we came home to our Board, my president and myself, and drafted and adopted a resolution of no confidence in Commissioner Burke. That is the resolution that these other boards have adopted and allowed me to speak to, and why.

One observation that I have noted in all these meetings: anyone who came to speak in behalf of the Commissioner --and I am just a layman, a simple person, wife and mother. I have a job. I have been on the Board for eight years. I have seen people come and speak on behalf of Commissioner Burke for political reasons. One group was "wanters," wanters of favors, wanters of unfulfilled promises. I am a wanter. I am a wanter for a damn good education for my 4300 kids in Wall Township.

Believe me, Senators, when I tell you, I have been there. I have been involved for eight years. I am speaking to you from the heart and from the gut. That is how I get reelected. That is how I serve my constituents. I am very proud of it and I want you to know that.

One example that I have here in this packet is on the master plan. It has never been addressed here. I think it is a very, very important example of what Commissioner Burke has done to us from T&E, which is yours, to the Code, which is the State Board's, to his guidelines and rules and regulations.

The first copy here - if I can get my notes together - is the law. It says in (h), which I have circled, "Additionally, the State Board of Education may from time to time require each district to submit a facilities survey, including current use practices and projected capital project needs, but not more frequently than once every two years."

This is the only reference I can find in the law to master plans. You may find one. I may be wrong, but this is all I could find.

I go to the Administrative Code and I find number 8: "Master plans of projected capital construction needs, pursuant to law and regulation. . ."

We now have to develop a master plan. If you look at the next large packet of papers, you will see - I will just briefly go through it because I hope you will look at it - you will see that the State Department under Commissioner Burke is asking educational leaders across this State to get aerial maps, to study water tables, to get maps of recreational areas, areas not on the tax roll, demographic studies, aerial maps of highways - are they dual? are they single? are they completed or aren't they? - and so on and so forth - population mobility. I can tell you in my community it is cars. We have no busses or trains. That is how I would answer that question. But that is not what the Commissioner wants. He wants maps. He wants studies. We don't have the money and I'll be damned if I am going to send my superintendent out to do this kind of work. If he wanted to ask me in Wall Township, "You have K to 12. Do you have any splits? How many schools do you have? What grade levels are in those schools? What is your anticipated population?" --- That's another one. There is no way in hell you can anticipate population with the economy of today. Three years ago, I would have told you we needed two more high schools. We might need a building to house

two hundred children right now because nobody can afford to come in and buy a home. I cannot tell you what is going to happen in Wall Township in five years. I cannot tell you if I-95 is going to be ready like they promised two years ago - it may be five years from now - which has a lot to do with the growth of my community. I can't tell you about the waterflow because they are moving the Manasquan for I-95. I don't know what is going to happen to the waterflow or the water table. I can't tell you how much commercial and industrial growth is going to come in to Wall Township. I can't do that until we get sewers in or whatever other thing attracts people.

This is what the Commissioner wants my superintendent to tell him and I object. This is one very strong example.

They also want me to tell you how many schools I have and what grade levels were in those schools since their inception, since their doors were open. It is not relative. I can give him a master plan of Wall Township very simply and very sweetly. You tell me how in the world, with all these forms having to be filled out --- And he tells you here there are plenty of experts you can go to. You can pay through the nose, but there are plenty of experts. There are plenty of agencies that have this information available. Six hundred and eleven school districts are going to these agencies.

I lost my train of thought. You will have to excuse me. I just want you to realize that this kind of information, when it gets back to the State Department --- Does he have the manpower to look through it? Do they know what they are looking at when they read it? Do the industry, the roads and our water in Wall Township tell them anything about our children, our test scores, how many are going to college, etc.? It does nothing for education - nothing. I am just so sorry that I don't have the time or the expertise to address myself to many of the other areas, one is PBBS. I will say one thing about PBBS. In two years, in 1982, when we have to begin PBBS, as Commissioner Burke has described we have to, the school districts in this State will fall apart - and remember what I said. I sincerely mean that and I know what I am talking about. He had a group together, a number of districts. They came back to him with recommendations. He did not accept their recommendations. They were in the field testing - they knew.

I have talked to leaders in PBBS across the State and across the country. I cannot give you any testimony as to any specifics. But this is what they are telling me and it scares the hell out of me.

There are a couple of other things that I would just like to finish up with. As one witness said here a few days ago, four or five years ago, the State supported 31 percent of their budget that went to education. The income tax came along. It was supposed to relieve the property tax. The State still pays 31 percent of their total budget for education, with an income tax and with the property tax. It has done nothing for our children. Money is not the issue here.

I sincerely believe that somehow the Legislature and the State Board have to have some type of oversight committee. I must fault the State Board in many instances for not following through on guidelines, but that is Burke's responsibility. They developed the Code. But the Legislature may consider that.

I would like to please ask you to read the interim report on the Department of Education if you haven't already. Please address yourself to that. It was

right out of the Governor's Office. I think it is extremely important that you understand that we down in our local districts are very upset. We are carrying on a good educational system, despite the State Department, despite their thwarting our every effort. Believe me, I know what I am talking about.

Thank you very much for your time.

(Packet of material submitted by Ms.White is on file with the Committee.)

SENATOR GREENBERG: Thank you.

Senator Vreeland.

SENATOR VREELAND: I was looking at this master plan you gave us.

How often do you have to make this up and send it back to the Commissioner?

Do you send it back to the Commissioner?

MS. WHITE: It goes to the Commissioner as of this July 1. There was a year's delay. It was due last year.

SENATOR VREELAND: This is the first one then?

MS. WHITE: This is the first one. May I give just one example. Unit Plan out of Princeton, which I think is an architectural firm, has been hired by the Freehold area to do a master plan of all the school districts in that area. They have paid for it and put their time in. Now the State Department is coming in and they are going to have a master plan of Monmouth County. This is the duplication that goes on and on and on of money and of time.

SENATOR VREELAND: That is all I have.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: No questions, Mr. Chairman.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: I just want to thank you for your sincere presentation.

MS. WHITE: Thank you.

SENATOR GREENBERG: Judith Esmay.

J U D I T H E S M A Y: Senator Greenberg and members of the Judiciary Committee, I appear to be the last speaker before you on these matters.

SENATOR GREENBERG: So far.

MS. ESMAY: I claim the distinction so far. As such, I think it is appropriate for me to thank you on behalf of myself and the other speakers for your having extended these hearings to what is now an extraordinary length. I assure you that I write more succinctly than I speak. I beg your indulgence while I read my remarks. I have clocked them at something close to seven minutes.

I am Judith Esmay, a resident of Morris County, a life-long resident of New Jersey, and a product of the public schools of this State, as are my three children. I have served as coordinator of the N. J. State Board of Education's Our Schools Project, designed to encourage the citizens of this State to establish educational goals for the children of New Jersey; as member of the Needs Assessment Advisory Committee, serving the State Board of Education; member of the Passaic Township Board of Education; founder and first chairman of Advocates for Education. I am an attorney at law in the State of New Jersey and for the greater part of the past eight years have reviewed and reported on developments in school law, as lay person, as law student, and as lawyer.

I speak--as an individual--in opposition to the appointment of Dr. Burke as Commissioner of Education, and I am grateful to you for affording me this opportunity to do so.

I am deeply concerned for the future of public education in this state if Dr. Burke continues in his present position as Commissioner. I have heard in these hearings grave charges made regarding Dr. Burke's performance in office, some of them emanating from the Governor's own transition report. My concern arises from these charges, but also from statements made by those who spoke in favor of Dr. Burke's appointment. I have heard public officials state that Dr. Burke has cooperated with them, has run interference with the State Board for them, has always been accessible to them, has bypassed a local board of education to counsel them, and that he knows the system--the ways that the Commissioner, the legislature, the Governor's office, and local officials interact in matters affecting public school education in New Jersey.

I submit that he does not know the system: that there is a legislated design to the governance of education in this state which Dr. Burke does not honor. It is by now familiar litany that the Legislature is responsible, under Article 8 of the New Jersey Constitution, for providing a thorough and efficient system of free public education to the children of this state. In its infinite wisdom, the Legislature has done that--through the enactment of the laws gathered at Title 18A of the New Jersey statutes--in a way which tends to insulate the governance of education from the political process. The interests of New Jersey's one million four hundred thousand school children--traditionally a vulnerable and protected

class of persons--are, to the greatest extent possible, removed from political forums and are protected by lay boards--the State Board of Education and 611 district boards of education. The lay persons on those boards serve, without compensation, a sole purpose: the governance of education.

The State Board of Education is charged by statute with the general supervision and control of public education, other than higher education, in this state. NJSA 18A:4-10 The State Board is the head of the State Department of Education, NJSA 18A:4-1, and has been vested with broad powers to make and enforce rules for its government, for implementing the school laws of the state, NJSA 18A:4-15, and in general, those requisite to the performance of its duties. NJSA 18A:4-16 It must establish goals and standards applicable to all public schools in the state. NJSA 18A:7A-6 The Commissioner is the official agent of the State Board for all purposes, NJSA 18A:4-22; he is its secretary, NJSA 18A:4-9; he must report to the State Board such information as it requires once each month, NJSA 18A:4-40; and he is charged by law to enforce the rules of the State Board. NJSA 18A:4-23 His decisions in cases and controversies are subject to the State Board's appellate review. NJSA 18A:6-27 The Commissioner is executive and administrative officer of the department, NJSA 18A:4-22; he has not been vested with the power to set educational policy. He should counsel and assist the State Board; he cannot usurp their powers.

I have heard more than one testimony at these hearings acknowledge conflict between the State Board and the Commissioner, and I have heard it suggested that such conflict is

"healthy" and "constructive." Free and open discussion is healthy; given the relationship between the Commissioner and the State Board compelled by statute, however, such conflict is not healthy nor constructive nor conducive to public trust in the operation of government.

The guidelines for tenured teacher evaluations are a telling case in point. After prolonged and careful deliberations, the State Board adopted rules requiring such evaluations. The Commissioner's guidelines, purporting to offer specific direction to local boards on the implementation of those rules, so misconstrued both the substance and intent of the State Board rules that the Board was forced publicly to correct the Commissioner and direct the drafting of new guidelines. You have heard much about the guidelines and rules for tenure teacher evaluation. My inclusion of them does not indicate, I hope, that they are the only instance where this has occurred.

We have heard the testimony of one State Board member, William Colon, that he is deeply dissatisfied with Dr. Burke's performance. Mr. Colon, in response to Senator Greenberg's request, named other State Board members whom he alleged were similarly dissatisfied. I have heard no response denying those serious allegations from those named members. I respectfully suggest that the matter is of sufficient importance to the considerations now before this Committee to warrant its inquiry directly to members of the State Board of Education, and I would

endorse Senator Gagliano's suggestion of an in camera inquiry made earlier today.

The Legislature has made it manifestly clear that it is the public policy of this state that citizens shall have full and meaningful access to their governmental instrumentalities. I cite the Right to Know Law and the Open Public Meetings Act. That concern for the interest of the consumer of governmental services is, for example, set forth in the Public Employer-Employee Relations Act, which requires that the interest and rights of consumers and people of the State, while not direct parties to collective bargaining, "should always be considered, respected and protected."

The concern is exemplified by the Legislature's findings in the Public School Education Act of 1975, at NJSA 18A:7A-2a:

(5) In order to encourage citizen involvement in educational matters, New Jersey should provide for free public schools in a manner which guarantees and encourages local participation consistent with the goal of a thorough and efficient system serving all the children of the State;

(6) A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the schools, the establishment of district budgets, and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination and are consistent with State wide goals, guidelines and standards.

This mandate is underscored by the New Jersey Supreme Court's decision in Ridgefield Park Education Association v Ridgefield Park Board of Education, 78 N.J. 144 (1978) wherein Justice Pashman sets forth the statutory language I have just quoted as a bar to the collective bargaining of permissive subjects which may involve issues of educational policy and management

prerogatives. The decision further suggests that "the very foundation of representative democracy would be endangered... where citizen participation is precluded....[T]he true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry."

Dr. Burke, in a letter to the Education Law Center already entered in the record of these hearings, has stated that the quoted portions of the Public School Education Act of 1975 mean nothing more than the already well-established system of representation of citizen interest by district boards of education. I believe the Supreme Court read you differently. I do not wish to suggest for even a moment that citizen involvement should displace the local board of education nor that the authority which reposes in the local board should be in any way diluted by citizen involvement. But Dr. Burke's refusal to see more than the status quo means, I believe, that he has failed the legislative mandate and has deprived the citizens of this State of their rightful expectations.

The job of a Chief State School Executive is a tough one--tougher still in a state as diverse and demanding as New Jersey. The facts that education generally may be in a one-hundred year crisis, that societal problems abound and appear to defy solution, that the Legislature, in response to Supreme Court mandate, may have enacted laws which are difficult to enforce--all these may make the job even tougher. No one seriously blames these problems on the Commissioner. There is, however, a job which must be done: that of providing quality education to all the children of this State.

I believe that job can be done, by a Commissioner who will work within the framework provided by the Legislature for educational governance. When Dr. Burke works outside that framework, and does not respect the responsibility and authority vested by law in lay boards and the citizens of this State, he loses public trust and violates our public faith in education. In four days of hearings, you have seen only a minute part of the evidence of that loss of public trust.

You have a solemn and awesome responsibility to discharge. Dr. Burke's reappointment requires the advice and consent of the Senate. As I understand that, the Senate - and more particularly and immediately, the Senate Judiciary Committee - must consider the merits of the Governor's nomination, unburdened by any presumption that that nomination is meritorious. I believe it is not, and that the continuation of Dr. Burke in his present position will do grave harm to the structure of institutions designed by the Legislature for the governance of public education and will further erode what public trust remains in the responsiveness of education to the public will.

I thank you for your patience and your endurance.

SENATOR GREENBERG: Thank you.

Senator Vreeland.

SENATOR VREELAND: Yes. Thank you, Mr. Chairman.

On page 6 of your statement, it says - and I quote - right at the top paragraph: "I believe that he has failed the legislative mandate and deprived the citizens of this State of their rightful expectations." Specifically, what did he deprive the citizens of in your opinion?

MS. ESMAY: I am addressing myself to Dr. Burke's attitude about the involvement of citizens in the public governance of education. I am not addressing myself to any specific instance of deprivation. But by that attitude, which extends, as I suggested, from the State Board of Education right down to the parent and the citizen who is concerned about the operation of a public school district -- that attitude permeates all of his activities.

SENATOR VREELAND: I still don't understand. You are saying that he doesn't recognize the participation of the parents in the educational system. Is that what you are saying?

MS. ESMAY: Yes.

SENATOR VREELAND: Because you point out a little further along in here -- even on the previous page -- that you believe in the local boards of education. And their involvement is part of T&E, isn't it? Don't the local boards of education get involved in "thorough and efficient" in the law? And are you saying that Dr. Burke is just by-passing the local boards and issues his own regulations without consulting them?

MS. ESMAY: I am saying that there has been testimony before the Committee that suggests that he has by-passed the local boards. But that is not the thrust of my comment. The thrust of my comment is that if Dr. Burke in following the legislative mandate, which is to say the findings in the Public School Education Act of 1975, that maximum citizen participation in governance is an essential part of a "thorough and efficient" system of education -- if he reads that to be, as he is now on record as having read that to be, through his correspondence, nothing more than the fact that a citizen can go to the polls and elect a member to a board of education, he has misread that mandate. I suggest the Supreme Court feels that way in the case I cited. It means something more than that.

Now, as to how that will be specifically carried out or seen in specific events, that remains to be seen. But I suggest with an attitude of that sort, it is not likely that the legislative mandate will be carried out.

SENATOR VREELAND: Thank you.

SENATOR GREENBERG: I would just like to pursue Senator Vreeland's question for a second. We have had testimony from a group of people, I think particularly coming from Newark, that have indicated that the deficiency that they see in the Commissioner is the fact that he hasn't control of the Newark situation. He hasn't by-passed the board, or corrected the board, or demonstrated to the board that it has been wrong. In effect, he has not taken over. We have heard that on the one hand.

On the other hand, we get arguments similar to yours. I am not sure I am reading you right. That is what I think Senator Vreeland was driving at and I would like to explore it for a second.

When you talk about citizen participation and Dr. Burke's ostensible view that it begins and ends in the electoral process, you are not suggesting, are you, --- Well, rather than my putting words in your mouth. I think you understand my problem in my analysis of the confusion that I see in the testimony. On the one hand, he is being criticized for not doing enough for the local boards. On the other hand, he is being criticized for doing too much. What is your position with regard to (a) citizen participation and its deficiency under Dr. Burke's administration and (b) the board's function and participation, itself, vis-a-vis Dr. Burke? Am I making any sense to you?

MS. ESMAY: I think I understand your question, Senator Greenberg. I think what the answer calls for is a description of how education works in New Jersey. The Legislature sets standards by law, which are the most over-reaching, the most demanding. It sets the parameters for those areas of educational policy which are to be considered, debated, and enacted by the State Board of Education, a group of lay persons appointed by the Governor. Those policies give direction to the Commissioner. Those policies take the form of the Administrative Code, as you all know. The Commissioner should not set educational policy. The Commissioner should be bound, not only by law, but by those policies set by the State Board of Education. Nonetheless, the Commissioner, the State Board and the Legislature with its powers of oversight and initiation are ultimately responsible for the "thorough and efficient" educational system offered the children of this State. That ultimate responsibility carries with it the responsibility and the authority to run a local school district if that is required. I don't see in any way that what I have just said is dissonant with the notion of citizen participation.

Citizen involvement in education can take all manner of forms. Certainly election of local boards of education, or election of the officials who appoint the local boards of education is one of them, and a basic one. Certainly, the requirement that all meetings of the local board of education be public so that citizens may go and listen to deliberations, and know what is going on, the requirement that all records be public, is another part of citizen participation and involvement.

There are an enormous number of forms that citizen participation can take. The New York Times reported a week or two ago on school site management, a system of citizen involvement which in some districts and some states works very well. I am certainly not suggesting that for New Jersey. It is simply another form of citizen involvement in the schools.

Involvement of collective bargaining which permits citizens to be present at collective bargaining sessions, which requires that the demands of the parties and proposals be made public, in California, this is another means of citizen participation.

These are short of citizen operation of the schools, which displaces the authorities of the local board of education. I am not for a moment suggesting that. I am not sure that I have addressed properly your question.

SENATOR GREENBERG: I think you have, except I am left with one question, and that is, with regard to your understanding of Dr. Burke's view and the efficiency of that view, vis-a-vis citizen participation. Would you please re-state that for me?

MS. ESMAY: As I understand Dr. Burke's view, which was in a letter addressed to the Education Law Center - which I believe Mrs. Raulston has entered on the record of these hearings - he has said that the legislative mandate, the legislative findings in the Public School Education Act of 1975 mean essentially the current system of citizen involvement by the election of district boards of education, and a representative democracy, that is to say, decisions made by a local board, elected by citizens and no more than that. I am suggesting that it is more than that. I am suggesting that his attitude expressed there is perhaps a spill over from an attitude of what we see in Dr. Burke's relationship to the State Board of Education.

SENATOR GREENBERG: I understand that. Senator Sheil.

SENATOR SHEIL: Thank you for your presentation.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: Thank you for your very thoughtful comments. There is one thing about citizen participation that distresses me just a bit, because you and one or more very responsible people testified here today, and one of the very distinguished members of the Committee has suggested that we ought to in some fashion meet behind closed doors with the members of the State Board of Education in the thought that they might say things there presumably adverse to Dr. Burke that they wouldn't say in public. I said outside to the Chairman, and I say it here publicly, if any member of the State Board of Education want to meet with this Committee behind closed doors, either in praise of or in opposition to Dr. Burke, I don't want to meet with him. My vote is going to have to be cast on the floor of the Senate. I am going to have to wrestle with the strengths and the weaknesses of this nominee, and I think he probably has both, and it is really an anathema to me in a free society - while I understand the motivation

of not wanting to be involved, having to work later on. They have a greater obligation than the person who just goes behind the curtain and votes in a Board of Education election where anonymity is the system. And, if they have feelings that are strongly held, I would welcome hearing them, but only if they are willing to share them in the same way you have been willing to, by coming forward and stating your views, whether people agree with you or not. And, I appreciate the fact that you were here, but I did want to put that on the record.

It distresses me that I guess most of you in opposition to the renomination suggest that in some fashion we ought to hear these whispered criticisms about things that are of sufficient public moment, that if they are legitimate criticisms, it ought to be spread on the record. We ought to hear them, and we ought to wait. I don't think we ought to meet behind closed doors with anyone. I would include the administration, which certainly has not tried to take me behind any closed doors.

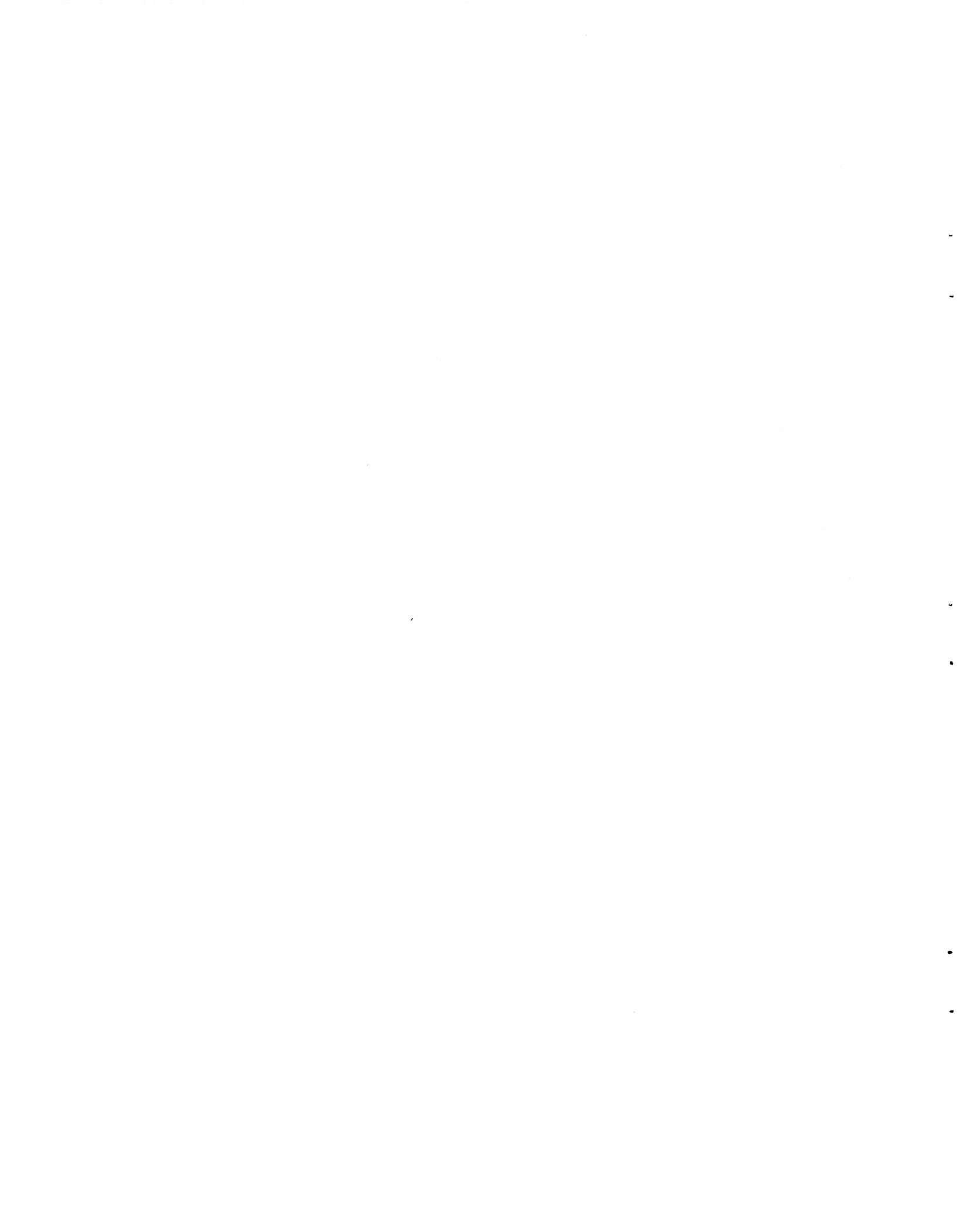
But, I think the public would have an outrage, if we were called into the Governor's office one by one and he said, "You know, he is my nominee. Would you please go along. To hear the other side behind closed doors from the State Board is just as bad, as far as I am concerned.

MS. ESMAY: I applaud your point of view, Senator Hamilton. I certainly want this Committee to have before it all information which I think is essential to its grave deliberations on this issue, and would want you to find out how the State Board of Education feels on that matter. I too want to know, and if it is at all possible to get their expression publicly, I very much want to know what it is. The people of this State have a right to know.

SENATOR GREENBERG: Thank you, Ms Esmay. There being no further people present who wish to testify, and the list of witnesses to testify having been closed last Friday at the end of our session, the scheduled hearings of the Judiciary Committee on the subject of the renomination of Commissioner Burke are now concluded. It is the intention of the Committee to await the report from the Attorney General's Office with regard to the matter which has been discussed here previously in connection with Mr. Worthington, and also to await the report from its staff with regard to its inquiry of the State Board of Education and at such time as those reports are received, there will be scheduled further action which will be publicly noticed, so that the public will be present at any future discussions of this subject, including a vote.

These hearings are concluded. Thank you.

(Hearing Concluded)



matters before your Committee by discussing just a few of the many specific ways in which Fred Burke has failed to provide leadership or has even flaunted constitutional and legislative mandates. I will focus upon matters which I know best and in which I can claim some expertise. I will try to avoid high-sounding rhetoric. Although I will deal with some detailed questions, you should not lose sight of their enormously broad public consequences.

My broadest concern involves the administration of the T & E process. Six years ago New Jersey was catapulted into a position of national prominence by the State Supreme Court's first decision in Robinson v. Cahill. New Jersey was given an opportunity to develop an education reform model for the rest of the states. Six years later New Jersey is widely regarded as having failed to provide that leadership. In my judgment, that is largely traceable to the failure of the Commissioner of Education to provide strong, consistent guidance. The T&E process has been marred by confusion, delay and obfuscation. This has undermined the effectiveness of serious, committed school administrators, teachers and board members, of whom there are many. It has frustrated and disillusioned parents and other citizens whose hopes were raised. It has created an aura that T & E is largely a paper process -- at best to be tolerated; at worst to be ignored. Let me give you just a few examples. The State Department, including the Office of the Commissioner, has had no up-to-date compilation of state guidelines and

policy statements. How can local districts and the county offices be expected to carry out a rational and effective T & E process when even the Office of the Commissioner cannot advise them of the operative policies? To make the point more concrete, several months ago I discovered a State Department publication entitled Educational Planning in the Local School District: Basic Skills (Part B). There was a first printing of 3,500 copies in February, 1977, and the manual was distributed to local districts by the Commissioner. In a section entitled "Program Improvement Alternatives", the manual provides "guidance" to local districts about students not achieving the state minimum standard in reading or mathematics.

A logical first step would be to retest these students using another instrument to substantiate the state test data On the basis of these results, professional judgments would be made as to what type of program suits the needs of these students. Three general categories may result from the follow-up testing:

- a. Testing confirms basic skills test findings. Remediation is prescribed.
- b. Tests confirm original results but the student is judged as performing on his appropriate level. No major program change is required. Some minor recommendations or adjustments may be advised to assist the instructors in working with the student.
- c. Test results are not compatible with state test results and there is sufficient evidence to disregard original data. (p. 36)

Make no mistake about what this guidance encourages -- a student falls below state minimum standards on the state-wide basic skills test; local testing procedures confirm that

he or she is functionally incompetent; yet, if the student "is judged as performing on his appropriate level", the student will not receive the remedial help provided for by State Board regulation. The process and standards by which the student may be judged to be performing "on his appropriate level" are nowhere set forth. What if the district determined that poor, Black children could not be expected to reach the state minimum standards and, therefore, denied them remedial help? Impossible, you might say. Yet, I was at a meeting where Fred Burke said that, by looking at socio-economic criteria, we could determine in advance those students who could not be brought to functional literacy.

At a meeting with senior State Education Department staff I referred to this provision and its potential for undermining a crucial aspect of the T & E process. I was met with blank faces. None knew of such a guideline and they doubted it existed. I later provided them with a specific reference and it was conceded that the provision did raise serious problems. Yet, for two years local districts have had this manual and could reasonably assume that it reflected the Commissioner's policy. To my knowledge, this problem has not been cured. In fact, I am attaching to this testimony a copy of a letter which I have just sent to William Volk, State Coordinator of T & E, raising many legal problems about the whole concept of "validating" students out of remedial programs despite the fact that they perform below the state's minimum standards in the basic skills.

This problem is illustrative of many which have been created by the Commissioner's failure to carry out constitutional and legislative mandates; it is not an isolated example. A related problem -- the misallocation and misuse of state compensatory education funds -- has been described in detail by other witnesses so I will not belabor that point.

There are other problems which are, in their own way, even more troublesome. They are also even more directly traceable to the Commissioner. For example, the Commissioner has broad powers and duties under the Public School Education Act of 1975 (chapter 212) in the area of budget and program review, including his cap waiver responsibilities. Many of these functions of the Commissioner reflect not only legislative policy decisions; they relate to requirements of the New Jersey Constitution. One example should suffice to indicate how Fred Burke has failed to carry out the will of the Legislature and of the people through their Constitution. At a meeting held on March 1, 1979, the Commissioner was asked what action he would take if a district submitted an educational plan and budget which eliminated all courses in art and music. His response was that it is the local districts which determine the content of a thorough and efficient education and that he would be powerless to deal with the situation.

That view is the ultimate perversion of the T & E clause of the New Jersey Constitution, as it was interpreted by the State Supreme Court in Robinson v. Cahill. It is also incompatible

with the intention of the Legislature and of the State Board of Education. In upholding the constitutionality of Chapter 212, the Supreme Court said:

It has been suggested that the power, given both to the Commissioner and to the State Board of Education, to direct "budgetary changes" does not include the power to compel an increase in a local school budget above that fixed by the local authorities. We cannot accept this limitation; to do so would be to emasculate, perhaps fatally, what we believe to have been the legislative scheme. It would thwart the State Board's authority to compel a local district to meet the financial commitments necessary to satisfy the thorough and efficient standards. . . . [U]nder the Act of 1975 the Commissioner does not in any sense stand as an arbitrator among local groups, nor does he wait for the matter to be presented to him. Directly or indirectly, he is the initiator. His study and review of the results of the tests and other monitoring procedures that are prescribed, and his consequent action pursuant to such study and review are vastly different from the terms of an annual budget. These are separate and quite distinct responsibilities that have been allocated to the Commissioner. They call upon him to follow quite separate procedures. For example, his function under the new Act is by no means confined to budget analysis. A failure to meet minimal educational standards may, perhaps more often than not, lie elsewhere than in matters of finance. Thus the Commissioner's study and review are not to be confined to a school district's financial support. There must also be included a consideration of the other elements set forth by the Legislature in N.J.S.A. 18A:7A-5. (69 N.J. 449, 461-62 (1976)).
[Emphasis added.]

One of the legislative guidelines for a T & E education specified in NJSA 18A:7A-5 is a "breadth of program offerings designed to develop the individual talents and abilities of pupils." That guideline has been implemented in regulations of the State Board, under its legislative mandate to "establish goals and standards which shall be applicable to all public

schools in the State" (NJSA 18A:7A-6). The Board promulgated State Educational Goals "applicable to all public school districts and schools in the State". One goal is for each student "To acquire the ability and the desire to express himself or herself creatively in one or more of the arts, and to appreciate the aesthetic expressions of other people" (NJAC 6:8-2.1(b)(9)).

Surely an opportunity to study art and music is essential to fulfillment of this State educational goal. As the Supreme Court stressed, responsibility for ensuring that districts meet this and other State goals and standards is the Commissioner's. His failure to carry out that responsibility would "emasculate, perhaps fatally, . . . the legislative scheme" (69 N.J. at 461). And Fred Burke, in effect, has stated publicly that he is not carrying out his responsibility.

His unwillingness to require local districts to adhere to state educational requirements, which runs throughout his administration of the T & E process, has curious gaps, however. His exercise of the cap waiver authority is a case in point. Under the statute, he can grant waivers if the district demonstrates either: (1) that it needs to spend more money in order to provide a thorough and efficient education; or (2) that increased enrollment may reasonably be anticipated (NJSA 18A:7A-25).

Initially, the Commissioner interpreted this power so broadly that he granted almost every request for a cap

waiver, whether or not it came within the two legislative criteria. After extensive criticism of this approach, he moved in the other direction. Still, he failed to develop any criteria which would indicate to local districts how decisions about waivers would be made. This year, in his own words at the same March 1 meeting, the Commissioner has carried out this power on the basis of some "arbitrary" standards (i.e., no waivers for districts above the 65th percentile expenditure level; no waivers based on increased spending for extracurricular activities). In this backhanded, informal and "arbitrary" manner, the Commissioner has actually imposed some statewide T & E standards. This is not the way such weighty public matters should be decided. It leads to arbitrariness and invites exactly the criticism which has resulted.

One can safely predict that should Fred Burke be reappointed as Commissioner of Education, and should he be permitted to continue to administer the T & E process, next year the cap waiver process will be based on different standards, differently applied. Others will be disgruntled; everyone will be confused; and the T & E process will be further diminished until the last chance for real educational improvement will have disappeared.

If there were more time, I could add many items to my list of Fred Burke's defaults. Prominent among them would be

matters bearing on teacher competence and effectiveness, such as certification, evaluation and absenteeism. The same deficiencies in leadership, decisiveness and commitment to the Constitution's and Legislature's mandates exist there. Indeed, these same tendencies made possible embarrassments such as the Worthington affair.

For me, having lived day-to-day with these matters for almost five years, I am at the point of saying "enough". The Commissioner's job is a difficult one -- granted. But that does not provide an excuse for what I and many other citizens have observed and related to you. The time has come for you to act upon your constitutional responsibility and to reject the reappointment of Fred Burke.



SCHOOL OF LAW - NEWARK - 15 WASHINGTON STREET - NEWARK - NEW JERSEY 07102 - 201/648-5561
S. I. NEWHOUSE LAW CENTER
WRITER'S DIRECT DIAL NUMBER: 201-648-5433

March 28, 1979

Mr. William A. Volk
State Coordinator for T&E
State of New Jersey
Department of Education
P.O. Box 2019
Trenton, N. J. 08625

Dear Bill:

This is in response to your January 23, 1979 letter regarding the "validation" of pupils out of remedial programs.

As I understand the procedure, some students who fall below state standards on the Minimum Basic Skills test can be "validated" out of remedial programs pursuant to N.J.A.C. 6:39-1.2(c)(1). That section provides an exception to the otherwise absolute requirement that, "All pupils performing below the established minimum levels of pupil proficiency in basic communication and computational skills . . . shall be provided appropriate instructional services. . . ." N.J.A.A. 6:39-1.2(c). The exception is triggered by a local board of education application to the Commissioner for a waiver of this requirement. According to the Code, the waiver may be granted by the Commissioner "if the program of needs assessment . . . clearly demonstrates such enrollment is unnecessary." I wrote to Catherine Havrilesky on November 10, 1978, requesting information about the procedures which would govern such waivers and the status of implementation of those procedures. The matter was discussed at a January 2, 1977 meeting in Ms. Havrilesky's office and your letter was a further response to my request.

Unfortunately, the meeting and your letter failed to answer some of my concerns and raised others. I assume that there are no statewide standards or procedures which govern the waiver process. You make no reference to any and the second paragraph of your letter indicates that the procedures you describe are based on a "consensus" of how county staff from three regions of the State actually handle local district waivers. Indeed, it appears that there are no actual applications to the Commissioner for waivers. Instead, local districts

simply report what arrangements they plan to make (or have made ?) for students falling below state standards. Some of those students will be "validated" out of remedial programs. The only check on this local discretion, based on the county staff "consensus" you described in your letter, apparently is that districts must have written procedures for validating pupils out of remedial programs and county staff monitors the process. There are a number of defects in this scheme (beyond the overriding ones of the absence of statewide standards and procedures, and the absence of any central administering authority for the waiver process). The written procedures required of districts fail to establish any substantive criteria or to indicate what weights should be given to the "multiple means of assessment" applied locally. Suppose, for example, that a local district considers whether some of its students who scored below the state minimum standard in reading should be "validated" out of the available remedial programs. According to the written procedure, it must use multiple means of assessment, including one test score other than the state MBS, teacher judgment, observation and performance. It must also involve teaching staff and building administrators in the decision, and it must inform, and where necessary counsel, the parents. What types of "other test" may be used? How is a determination made as to whether the score on that other test confirms or rebuts the state MBS test? What if the locally-administered test confirms the results of the state test?* What if teachers and administrators disagree with the test results or disagree with one another? What does "observation" mean and who does it? How does it differ from "teacher judgment"? What is "performance history" and who evaluates it? Are generally passing grades and regular promotion persuasive evidence of proficiency in reading? Dispositive evidence? If the State Department has not established in advance standards for waivers, how can the county monitors reject local decisions based on a written procedure which satisfies the process requirements your letter outlines?

There is another serious problem with the procedure described in your letter -- the apparently total reliance on county

*I raised with Catherine Havrilesky the problems created by a provision in the State Department publication, entitled Educational Planning in the Local School District: Basic Skills (Part B) [Feb. 1977], which encourages districts to "validate" out any student "judged as performing on his appropriate level" even though locally-administered tests confirm that the student is below minimum competency levels.

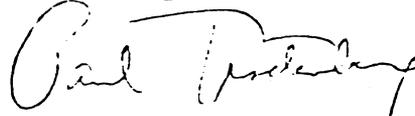
staff monitoring. As you state, "All of the above [procedure for validation] is monitored on a regular basis by the county staff. That is, as regular as the staff/workload permits." The effectiveness of the procedure, despite all the inherent defects previously discussed, can be reduced further by the press of other county staff responsibilities. In some cases, the waiver process may wind up as pure rubber stamping of local district decisions.

In my judgment, these are not picayune, technical matters. They go to the heart of what the Constitution, the Legislature and the State Board of Education intended by their definition of a "thorough and efficient system of free public schools". Clearly, the emphasis is on providing all students, "regardless of socio-economic status or geographical location, the educational opportunity which will prepare them to function politically, economically and socially in a democratic society." (N.J.A.C. 6:8-Foreword). Equally clearly, reasonable proficient in the basic skills is a crucial measure of whether that educational opportunity is being provided. The Minimum Basic Skills test and the remedial program for students diagnosed as falling below acceptable performance standards are at the heart of the effort actually to provide that educational opportunity. Exclusion of children from remedial programs, therefore, is a matter of great import. It is a matter to which the Commissioner must address his attention in the discharge of his clear statutory mandates.

This applies, incidentally, not only to efforts of local districts to obtain waivers of the remedial program requirements; it applies to parental waivers as well. The statement in your letter that high school pupils may be "validated" out of remedial programs at the written request of their parents came as a complete surprise to me. Is such a procedure based on any statutory or regulatory provision? If not, how can it be justified? I assume that parents, despite their substantial legal rights in the educational process, can not be given an absolute veto power over placement of their children in appropriate educational programs. Surely, if a child were handicapped in the Beadleston Act sense, the parents could not unilaterally dictate a placement contrary to the school authorities' best educational judgment. The parents do have a right to challenge that judgment through a due process hearing procedure or in other available forums, but that is hardly a veto power.

The issues I have addressed in this letter are important. They affect the legality as well as effectiveness of New Jersey's educational system. If I can provide you with more information or if I can assist you in any other way to bring the system into conformity with legal requirements, I would be pleased to do so. I would appreciate being kept informed of developments, including those of the committee dealing with criteria for "validating" students out of remedial education programs.

Sincerely,



Paul L. Tractenberg
Professor of Law

PLT/ad

cc: Paul Ricci, President, State Board of Education
Commissioner Fred G. Burke
R. H. Lataille
C. Havrilesky
W. Brooks

Essex County Council of
Parent-Teacher Associations



March 12, 1979

Hon. Martin L. Greenberg
Chairman, Senate Judiciary Committee
Trenton, New Jersey 08625

Dear Senator Greenberg,

This letter is written on behalf of the Board of Managers of the Essex County Council of PTA's which, on March 5, 1979, discussed and voted upon the matter of Commissioner Burke's reappointment as Education Commissioner.

We feel that he lacks leadership and has been weak and indecisive in such areas as implimentation of "T&E", of teacher evaluation, and of teacher certification. We deplore his ineffectiveness in allowing the Newark deficit situation. His inability to work with the State Bpard of Education has been detrimental to education in our state.

In these difficult times, we need decisive and effective leadership. As advocates for children (in Essex County), we do not feel that Mr. Burke can provide that kind of leadership.

We have regretfully reached the position to oppose the re-nomination due to a lack of confidence in Fred Burke.

Respectfully,

Arlene W. Rothenberg
Chairperson Legislation

Arlene W. Rothenberg

copy sent:

Governor Byrne
Senator DeDD

**SUBJECT: Dr. Fred Burke's
re-appointment as NJ State
Education Commissioner**

**850 Park Drive
Cherry Hill
New Jersey 08002
March 23, 1979**

The Honorable State Senators:

On behalf of the New Jersey Deaf Community, I take the liberty of writing to strongly urge your support of the re-appointment of Dr. Fred Burke as State Education Commissioner.

Under my Total Communication Chairmanship, the New Jersey Association of the Deaf, Inc., achieved its goal, due to Dr. Burke's understanding and support.

The NJAD launched its Total Communication Drive in 1972, for the better education of deaf children. For two years, we worked hard but without success. Then, in 1974, Dr. Fred Burke became State Education Commissioner and welcomed our views.

Dr. Burke appointed two deaf citizens: one from the New Jersey Association of the Deaf, and the other from the Marie H. Katzenbach School for the Deaf Alumni Association, to the screening committee for the selection of a new superintendent for the School for the Deaf. Later, he submitted Phil Cronlund's name to the State Board of Education for full confirmation. The Board voted unanimously to accept him.

In 1975, under the guidance of Superintendent Phil Cronlund, the Marie H. Katzenbach School for the Deaf, officially adopted the Total Communication Philosophy, for its 600 students, with the approval of N. J. State Board of Education. That was the first time in almost 50 years that those deaf children were allowed to receive a better education through the use of sign language as well as speech, throughout the entire school.

Following the New Jersey Association of the Deaf Total Communication Victory, many day schools in New Jersey adopted Total Communication for the deaf children in special classes.

Now, hearing parents are invited to attend sign language classes so that they can communicate more fully with their deaf children. Sign

Language classes for teachers as well as for parents are booming in New Jersey, as in other parts of the United States.

We fully realize that if it had not been for Dr. Fred Burke, we would never have achieved our goal. That is why we gratefully acknowledge his support and leadership, and we endorse him 100%.

We hope you will see fit to vote for the re-appointment of Dr. Burke as State Education Commissioner.

Your consideration of this matter will be greatly appreciated and I am looking forward to hearing from you.

Sincerely yours.



Albert G. Barnabei,

Past NJAD Total Communication Chairman

cc:

Governor Byrne

Dr. Burke

Supt. Phil Cronlund

Memo from . . .

FRANK F. KUNCA

120 Belmont St.
Weymouth, N.H. 07880

2/13/79

Dear Sir

May I ask you not to vote
for Mr. DeLoach & Burke for
second five year term as
state education commissioner.

Please give thought to
Mr. Robert J. Burke's article (2/13/79)
in the New Hampshire Ledger where in
he analyzes Mr. Burke's
accomplishments to date
in his present post.

Thank you,
Very truly yours
Frank Kunca

JOHN DE
P.O. BOX 101 WOLF HILL RD
FAR HILLS NJ 07931



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201270497 WGN TDXT FAR HILLS NJ 100 03-12 0408P EST

THE CHAIRMAN
STATE JUDICIARY COMMITTEE
NEW JERSEY STATE SENATE
TRENTON NJ 08625

GENTLEMEN AS PARENTS AND TAXPAYERS WE ARE DEEPLY CONCERNED ABOUT THE
RENOVATION OF FRED G BURKE AS STATE COMMISSIONER OF EDUCATION MR
BURKE'S ACTIONS HAVE SHOWN A TOTAL LACK OF CONCERN FOR THE EDUCATION
AND WELLBEING OF OUR CHILDREN AS WELL AS INSENSITIVITY TO THE CITIZENS
OF THE STATE WE STRONGLY URGE THAT YOU NOT RECONFIRM HIS APPOINTMENT

JOHN AND GAIL P VERGOZ

1008 EST

WGN0004 WGN

RICHARD WOLFF
70 SPRING ST
METUCHEN NJ 08540



4-007352E055 02/25/79 ICS IPMRNCZ OSP TRNA
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SENATOR MARTIN GREENBERG
STATE SENATE BLDG
TRENTON NJ 08625

THE METUCHEN PTA COUNCIL REPRESENTING ALL THE PARENT-TEACHER
ORGANIZATIONS IN THE COMMUNITY, PROTEST THE REAPPOINTMENT OF FRED BURKE
AS CHIEF OF PUBLIC SCHOOLS AND DEMAND ADEQUATE HEARINGS ON THIS ISSUE.

NICKIE WOLFF
CHAIR-PERSON
METUCHEN PTA COUNCIL

1720 EST

WGMCOMP WGM

METROPOLITAN EM J FELLNER
MC CARTER HWY
NEWARK NJ 07100.

western union Mailgram



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2015237932 MGM TDMT PATERSON NJ 100 02-21 0445P EST

SENATOR MARTIN GREENBERG
STATE HOUSE
TRENTON NJ ~~03500~~
08625

WE, THE MEMBERS OF THE PATERSON PARENT CITIZENS UNION, STRONGLY URGE
THAT A PUBLIC HEARING BE HELD BEFORE THE REAPPOINTMENT OF COMMISSIONER
BURKE BECAUSE OF THE DEVASTATED CONDITION OF OUR PUBLIC EDUCATIONAL
SYSTEM.

WHY THE RUSH?

THE PATERSON PARENT CITIZENS UNION
CARE LADY OF VICTORY RC CHURCH
BROADWAY AND MEMORIAL DR
PATERSON NJ 07500

1959 EST.

MGMCOMP MGM



Telegram

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ICS IPMMIZZ CSP

6096972822 TDMT LANDISVILLE NJ 8 02-21 1256P EST

PMS SENATOR MORTON GREENBURG

STATE HOUSE

TRENTON NJ

DO NOT RE-APPOINT BURKE PUBLIC HEARING ESSENTIAL

MR AND MRS JOHN H MEYER

NNNN

*File
7:00 PM*

WESTERN UNION

Telegram

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6096972142 TDMT MINOTOLA NJ 15 02-21 1230P EST

PMS HON MARTIN GREENBERG, DLR

STATE HOUSE 127 WEST STATE ST

TRENTON NJ 08625

OPPOSED TO REAPPOINTMENT OF COMMISSIONER BURKE. EDUCATIONAL
LEADERSHIP IN TRENTON IS WEAK. PUBLIC HEARING NECESSARY

SANDRA VACCARIA

ADVOCATES FOR EDUCATION

PO BOX 223

MINOTOLA NJ 08341

NNNN


Telegram
western union

TNA017(0928)(4-010534E074)PD 03/15/79 0928

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PMS SENATOR GREENBERG, DLR

STATE MUSEUM AUDITORIUM WEST STATE ST

TRENTON NJ 08625

THE MILLBURN HIGH SCHOOL PTA CONCURS WITH SENATOR DODD'S REASONS FOR
REJECTING BURKES RENOMINATION

MARY J SWANSON PRESIDENT MILLBURN HIGH SCHOOL PTA

NNNN



Telegram

TNB 153(1952)(4-030594E056)PD 02/25/79 1952

ICS IPMMIZZ CSP

2014941423 PCM TDMT METUCHEN NJ 14 02-25 0752P EST

PMS SENATOR MARTIN GREENBERG

STATE SENATE HOUSE

TRENTON NJ

EDGAR SCHOOL PTA METUCHEN PROTESTS REAPPOINTMENT COMMISSIONER

EDUCATION FRED BURKE. PLEASE PROVIDE ADEQUATE HEARING

BETTY KIRTMAN PRESIDENT 14 POETS LN METUCHEN NJ 08840

NNNN

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645



4-035753E052003 02/21/79 ICS IPMNTZZ CSP NWKB
2 6096972142 MGM TDMT MINTCLA NJ 02-21 0137P EST

MARTIN L GREENBURG
100 EVERGREEN PL
EAST ORANGE NJ 07018

THIS IS A CONFIRMATION COPY OF A PREVIOUSLY PHONE-DELIVERED TELEGRAM
BURKE SHOULD NOT BE REAPPOINTED WITHOUT PUBLIC CONFIRMATION HEARINGS
MANY QUESTIONS REGARDING LEADERSHIP
MICHAEL ZACCARIA EDUCATIONAL STUDY GROUP (CARE REDBORN NURSERY
SCHOOL PACIFIC AVE MINTCLA NJ 08341)

13:39 EST

MGPCCMP MGM

FEDERAL SERVICE CENTER
MIDDLEBURY, VA. 22645



4-025704E052 02/21/79 ICS IPMMTZ CSP TRNA
5000000000 MGM TDXT TRENTON NJ 100 02-21 1142A EST

SENATOR MARTIN GREENBERG
CHAIRMAN LEGISLATIVE COMMITTEE
STATE HOUSE
TRENTON NJ 08625

WE EXTEND THE SUPPORT OF THE PUERTO RICAN CONGRESS BOARD FOR THE
CONFIRMATION OF THE REAPPOINTMENT OF COMMISSIONER OF EDUCATION FRED G
BURYE

JANIE VAZQUEZ
CHAIRMAN
PUERTO RICAN CONGRESS OF NEW JERSEY
BOARD OF DIRECTORS

1144 EST /

MGMCCXP MGM

March 12, 1971

Patricia Amoroso

Marie Amoroso

340 William Street

New Milford, N.J.

07646

The Honorable Martin Greenberg
50 Evergreen Place
East Orange, N.J. 07018

Dear Senator Greenberg:

We are writing to you because of our concern with the re-nomination of Fred Burke as Commissioner of Education. During his five years as Commissioner he has proven to be weak and indecisive in implementing the mandates of the T & E laws.

We find two of his stunts particularly distressing. The first concerns maximum citizen involvement, one mandate of T & E. Mr. Burke said this is restricted to the election of local board members and attendance at their meetings, which is nothing more than we had before T & E was enacted. The second deals with using pupil progress as one part of teacher evaluation. After 18 months of work by the state board of education, Mr. Burke has watered down the guidelines to the point that they have become virtually meaningless.

March 12 1979

We need a Commissioner with the courage and determination to fully implement all the mandates of the T & E law. Doing this will guarantee a truly thorough and efficient education for each child in this state, and protect our rights as citizens. We look to you as our elected representative to speak for us. Please do so by opposing the reappointment of Fred Burke as Commissioner of Education.

Sincerely yours,

Patricia V. Amoroso
Marie J. Amoroso

Essex County Council of
Parent-Teacher Associations



March 12, 1979

Hon. Martin L. Greenberg
Chairman, Senate Judiciary Committee
Trenton, New Jersey 08625

Dear Senator Greenberg,

This letter is written on behalf of the Board of Managers of the Essex County Council of PTA's which, on March 5, 1979, discussed and voted upon the matter of Commissioner Burke's reappointment as Education Commissioner.

We feel that he lacks leadership and has been weak and indecisive in such areas as implementation of "T&E", of teacher evaluation and of teacher certification. We deplore his ineffectiveness in allowing the Newark deficit situation. His inability to work with the State Board of Education has been detrimental to education in our state.

In these difficult times, we need decisive and effective leadership. As advocates for children (in Essex County) we do not feel that Mr. Burke can provide that kind of leadership.

We have regretfully reached the position to oppose the re-nomination due to a lack of confidence in Fred Burke.

Respectfully,

Arlene W. Rothenberg
Arlene W. Rothenberg
Chairperson Legislation

c.c. Governor Byrne
Senator Dodd

MOUNTAINSIDE BOARD OF EDUCATION

1391 U. S. ROUTE 22, MOUNTAINSIDE, NEW JERSEY 07092

JOHN M. McDONOUGH
SECRETARY - BUSINESS ADMINISTRATOR
(201) 232-9406

March 5, 1979

Dear Senator Greenberg,

As a Board of Education we are opposed to the reappointment of Dr. Fred G. Burke as Commissioner of Education in New Jersey. Our Superintendent, Dr. Levin B. Hanigan, has sent you copies of newspaper articles that give all the details of the reasons why he should not be appointed, and we agree with them.

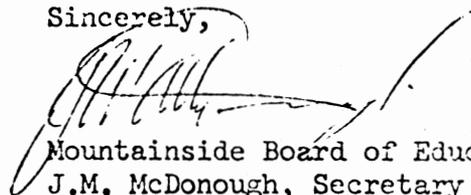
Never the less, we want to expand on some of the most important ones. We feel that he has been a complete failure as an educational leader and a child advocate. He has vacillated back and forth and reversed himself so many times that we who are responsible for local education are in a state of constant confusion. It is perfectly obvious that he is a politician not an educator. He follows Governor Byrne's directions explicitly, and backs down before the NJEA pressure on every important issue.

Dr. Burke has been involved in the Worthington case in a manner that hardly befits a Commissioner. It smacks of favoritism and patronage and may even open him to criminal charges. When the budget mess in Newark and his inability to insure that the children of Newark receive a thorough and efficient education are added to his record of general mediocrity, to reappoint him as Commissioner would seem to be a dereliction of duty that would condemn the public school children of New Jersey to another five years of leaderless education of questionable value.

Finally, Dr. Ralph H. Lataille has resigned. When this competent educator sees the handwriting on the wall, and leaves the Ship of State, things must be indeed bad. We urge you to exert the pressure necessary to deny reappointment to Dr. Fred G. Burke.

We further believe that public education would be in much better shape if the Commissioner were appointed by the State Board of Education and responsible solely to them for his administrative responsibilities. This would remove some of the political pressure now exerted by Governor Byrne and self serving groups like the NJEA.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J.M. McDonough', written over a horizontal line. The signature is fluid and cursive.

Mountainside Board of Education
J.M. McDonough, Secretary

JM/plb

LEVIN B. HANIGAN
SUPERINTENDENT
(201) 232-3232

March 5, 1979

The Honorable Martin L. Greenberg, Chairman
Senate Judiciary Committee
100 Evergreen Place
East Orange, NJ 07018

Dear Senator Greenburg:

The enclosed articles give a very detailed list of reasons why Dr. Fred Burke should not be appointed to a new term as New Jersey Commissioner of Education, and I agree wholeheartedly with them. To save time and space, I see no reason for me to repeat each one of them, so I'll concentrate on Governor Byrne's endorsement of his reappointment--"He has gotten through five of the very toughest years and faced some very difficult problems. He also has not gotten himself into too much trouble."

What an endorsement for the man who is primarily responsible for the education of all public school children in New Jersey! Where is the educational leader, the child advocate, the man with vision, the man with the courage to resist political pressure from the Governor, the NJEA, or the legislature? We certainly do not have such an educational leader in Fred Burke. In him we have a purely political figure who marches to the tune of the Governor and the NJEA.

With a competent, inspired, creative Commissioner of Education, I firmly believe that, in spite of all the economic and political pressures, the education of public school children would still be one of the prime items on the state and local agendas.

Part of the whole political mess could be partially solved if new legislation that would enable the State Board of Education to appoint the Commissioner for four year terms could be passed. He would then be responsible to them in the same way that local superintendents are responsible to their boards. With this arrangement, the Governor could not control public education and use its positions for political patronage.

As a local school superintendent, I want to make two more final points. Since Fred Burke has been Commissioner, we have been the victims of his erratic, illogical, and ineffectual "leadership." We no sooner get his administrative plans when a change order reverses or changes our first instructions. The only way we survive is to use our own judgment, do as little as we can to meet the constantly changing State directives, and use our State professional organizations to battle the Commissioner.

When Dr. Ralph Lataille announced his resignation in the newspaper, the last person in the State Department of Education's higher echelon, who enjoys our respect as local superintendents, has seen the handwriting on the wall and abandoned ship. I am sure that he must feel that he can no longer cover up for Dr. Burke and live with his professional conscience.

I hope that you will join the effort to deny Fred Burke a new term as Commissioner.

Sincerely,


Levin B. Hanigan



Stewart

UNITED NATIONS ASSOCIATION of the UNITED STATES OF AMERICA
NEW JERSEY DIVISION

March 13, 1979

Mr. John Tumulty
Senate Judiciary Committee
Room 219
The State House
Trenton, New Jersey 08625

Dear Mr. Tumulty:

At the regular monthly board meeting of the New Jersey Division of UNA-USA held on March 10, 1979 a Resolution was passed unanimously supporting the re-appointment of Commissioner Burke.

Our organization is interested in New Jersey educational programs and we are presenting ideas and suggestions for utilizing materials available from UNA-USA on the state, county and local levels. In our work in the educational field we contacted Dr. Burke and his office and have had good working experiences with them. His attitudes concerning the educational requirements for students in this complex world are conducive to raising the educational standards in New Jersey.

We unanimously support his re-appointment for the benefit of our children and our communities.

Very truly yours,

A handwritten signature in cursive script that reads "Jack Coan".

Jack Coan
President

JC:jw
cc: Gov. Brendan Byrne

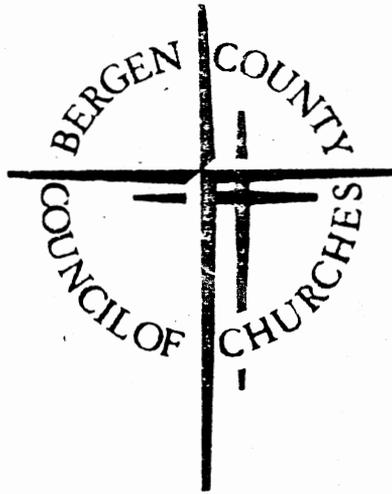
EXECUTIVE COMMITTEE

TASK FORCES

CHARTER REFORM STUDY, Rev. John D. WATT
FAMILY LIFE EDUCATION, Rev. Barrett O'Rear
MARKET PLACE MINISTRY, Rev. Graeme R. C. Vetch
MINISTRIES FOR & WITH YOUTH, Rev. A. Rand Peabody
SERVICES TO THE AGING, Mr. Alfred W. Kiefer
UNITED CAMPUS MINISTRY, Rev. David Risseeuw

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SOCIAL EDUCATION & ACTION
(Christian Action Forum), Rev. Gilbert S. Hellwig



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VICE-PRESIDENT (in charge of Finance) Rev. C. Mike Jousan
VICE-PRESIDENT Rev. Walter Taylor
SECRETARY Mrs. George E. Finch
TREASURER Mr. George M. Theuret

DR. STANLEY I. STUBER-ECUMENICAL MINISTER

ADVISORY COUNCIL
Mr. Alfred W. Kiefer
Mr. F. Clinton Spencer

OFFICE

165 Burton Ave., Hasbrouck Heights, N. J. 07604
Office Secretary — Mrs. A. Edward Vander Vliet
Phone. 253-3784

March 15, 1979

MEMBERS-AT-LARGE

Miss Betty Fetzer
Mrs. Newton S. Foster
Mr. Newton S. Foster
Rev. Tore Fryhle
Rev. J. Isaiah Goodman
Rev. Arnak Kasparian
Rev. W. Gordon Lowden
Mr. Robert Parr
Mrs. Nellie Rapp
Mrs. Robert Schuttler
Mrs. Norman L. Tilton
Mr. Robert F. Vierling

The Senate Judiciary Committee
C/) of John Tumulty
Room 219
State House
Trenton, New Jersey 08225

Dear Sirs:

As one who has seen the good results of
"T and E" education in this area of New Jersey, I am
in favor of giving Education Commissioner Fred G. Burke
another five-year term.

I am especially interested not only in the goal setting
system now being used, but also in the development of
courses in the whole area of ~~inter~~ international under-
standing and cooperation.

Sincerely yours,

Rev. Dr. Stanley I. Stuber
Ecumenical Minister Emeritus

SPECIAL APPOINTED DELEGATES

Rev. David Risseeuw
Dr. Marie T. Wendel
Dr. Stanley I. Stuber

CHAPLAINS AT BERGEN PINES

Rev. Edward P. Dixon
Rev. Arthur L. Maye

CAMPUS MINISTER

Rev. Richard P. Johnson

1 unrec'd
File Copy



March 15, 1979

Senate Judiciary Committee
Room 219, State House
Trenton, New Jersey 08625

Dear Committee Members:

This letter is presented in support of the reappointment of Commissioner Fred G. Burke as Commissioner of Education for the State of New Jersey.

When I learned that time for reappointment was at hand, I felt compelled to speak on behalf of this reappointment.

As former Chairperson, and present member of the State Advisory Council for the Handicapped; as Chairperson of Sub Committee, Part B, and member of the Title IV Advisory Committee; and formost, as an educator, I can attest to Commissioner Burke's educational leadership and development of a quality State educational system.

Commissioner Burke has sought advice and input from others on issues effecting special interest groups and the State educational system in general. I have enjoyed working with him on many occasions. His leadership appears to be aimed at improving the quality of education in New Jersey schools.

Thank you for considering these remarks as support for the reappointment of Commissioner Burke. I am sure that if reappointed, efforts will continue to improve New Jersey's educational system, especially in the area of programs and services for the handi-capped.

Sincerely,

Parthenia C. Smith
President
International Council for
Exceptional Children

PCS/bc

36X

DUNELLEN BOARD OF EDUCATION

434 DUNELLEN AVE., DUNELLEN, N.J. 08812

201-968-3231

GEORGE E. BALL
Board Secretary - Business Manager

MARY W. STEPHENSON
Bookkeeper

March 14, 1979

The Honorable Martin L. Greenberg
Senator, State of New Jersey
100 Evergreen Place
East Orange, New Jersey 07018

Dear Senator Greenberg:

The Dunellen Board of Education on March 13, 1979 at their regular board meeting voted seven to two in favor of adopting the attached Resolution.

They have instructed the Board Secretary to see that your office receives a copy.

Sincerely,



George E. Ball,
Board Secretary/Business Administrator

GEB/um

enc.

230 Anderson Street
Hackensack, New Jersey 07601
March 13, 1979

State Senator Matthew Feldman
790 Grange Road
Teaneck, New Jersey 07666

Dear Senator Feldman,

We are appealing to you as teachers who are truly concerned about the future of our children. We have watched the deterioration of the educational process in the past years and we are outraged.

We have approached many teachers, members and non-members of the New Jersey Education Association, and they do not support the reappointment of Commissioner Burke. The teachers are struggling for an effective and responsive public education program which should be implemented by the leadership of the educational system.

Thorough and Efficient Education was mandated in 1976 in order to improve education, to insure that school districts develop clear educational plans, and that they follow procedures that draw on the knowledge of the districts' staff, students, and community. It was our impression that during the school year of 1976-77, school districts were to organize to address these new responsibilities under the leadership of Commissioner Burke.

Commissioner Burke's original intention for the program was to set individualized achievement goals and objectives for every public school youngster. Eventually, this idea was abandoned by the commissioner and, instead, he gave each school district home rule, thereby putting us right back where we began in the educational process. Commissioner Burke was hoping that each district would follow this approach but conceded that it was no longer mandatory. Again, Commissioner Burke washed his hands of the original guidelines which stressed individualization showing a lack of leadership, direction and management on his part.

The issue of evaluation has been misconstrued. The average tenured teacher is not against being evaluated! Once again, the meaning of accountability was not clarified. Teachers were led to believe that the children's standardized test scores would be used to measure the competency of teachers. We are aware that the State Board of Education wants tenured teachers evaluated, but Commissioner Burke's guidelines even infuriated the State Board. It seems to us that Commissioner Burke has

attempted to satisfy the desires of both the New Jersey Education Association and the State Board with his guidelines but has succeeded in satisfying neither.

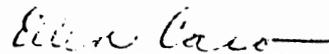
Many problems have developed due to the lack of definitive direction from the Commissioner, one of which is the lowering of standards in such programs as bilingual education. The scores required on the proficiency tests have been lowered, so that more teachers will pass the bilingual test. This has allowed many unqualified teachers to instruct children in Spanish, as well as English. The Puerto Rican Congress has come out against the lowering of standards because they know it will be detrimental to the learning progress of their children.

We cannot overlook any child. The handicapped child this year has been recognized but not adequately provided for. More children have been and are being classified, but the funds allotted have not kept pace with the numbers of children who require specialized help.

Teachers are caught in the crossfire because of the lack of educational leadership in Trenton.

Senator Feldman, realizing your deep concern and commitment to public education both past and present, we appeal to you to oppose the reappointment of Commissioner Burke and encourage you to precipitate the process of finding a new commissioner. The children of New Jersey deserve better.

Very Truly Yours,



Ellen Caro



Rosalyn Sole

cc: Judiciary Committee

Senate Judiciary Committee
From: John R. Shipley Jr.
Subject: Commissioner Of Education

February 24, 1979

Gentleman:

It is necessary for the preservation of education in New Jersey for the Commissioner of Education to be a Professional Administrator and above all an Educator. This person must be free of politics.

With all of your wisdom and integrity, please take a serious look where the taxpayer has been placed in education. If in fact, our way of government is a government Of, By and For the people, how or why was the Citizenry put in a position in education where he or she is really a mandated financier. "Boston Tea Party".

Please take a complete look for the benefit of education today and in the future to see what part unions and politics are really playing. Not only wage wise but most important, educationally! Our children are not that tall and we have been taking a good look.

Many Thanks For Opportunity,

John R. Shipley Jr.

JS/cl

EDUCATIONAL STUDY GROUP

February 21, 1979

Members of the Senate Judiciary Committee
c/o Honorable Martin L. Greenberg, Chairman
Box 219, State House
Trenton, New Jersey 08625

Dear Members:

Please accept this letter as the voice of a group of concerned parents who are earnestly opposed to a hasty decision regarding the reappointment of Commissioner Burke.

Considering the opinions expressed by the State Board President P. Paul Ricci, the State Board of Education, and especially the results of a study evaluating Commissioner Burke; a study authorized by Governor Byrne's office: we feel that, (1) the public should be made aware of the findings of such a study; and, (2) added time should be taken by the Judiciary Committee to consider public opinion about this reappointment.

Thank you for your consideration and mutual concern in this matter, an interest of public concern, and thank you Senator Greenberg and your staff for the courtesy and assistance rendered to me when needed.

Sincerely yours,



Helen P. Norton
Co-chairman

Summally

Shiloh Baptist Church

Calhoun St. at Belvidere

Trenton, N. J. 08618

Telephone 609-695-2448

S. Howard Woodson Jr. D.D.S., U.D. Minister

Associates

- Thomas Leysath
- W. Oliver Leggett
- Elliott Cuff
- James Carter

March 28, 1979

Chairman of Boards

Deacon

Ollie Green

Trustee

Samuel Floyd

Finance

William Carter

Trustee Aide

Doretha Madden

Deaconess

Mozella Royster

Christian Missions

George Poole

Christian Education

Charles Sheffield

The Honorable Martin L. Greenberg
 Chairman, Senate Judiciary Committee
 State House
 Trenton, New Jersey 08625

Dear Senator Greenberg:

If it is possible, I would like to request that the following statement be considered in your deliberations relative to the reappointment of Commissioner Fred G. Burke.

I write this as a private citizen residing in the City of Trenton, who is greatly disturbed by recent news reports relating to certain adverse criticisms made against Commissioner Burke before your Committee.

According to the media, certain members of the current Trenton School Board majority have stated that Commissioner Burke's threatened take-over of the Trenton Public School System was nothing more than a conveniently planned action to show how tough he could be just prior to being considered for reappointment. In my estimate, nothing could be further from the truth. I personally know that Commissioner Burke had reluctantly considered the possibility of a take-over for more than a year. In several conversations with me, the Commissioner indicated, as far back as 1977, that unless matters improved in the operation of the Trenton School System, he would be forced to move to intercede in the system and take over on an interim basis.

The Commissioner had approached me as a private citizen whom he felt would give him an honest appraisal of his concern and reluctant intent if matters in the Trenton System did not improve. His recent decision to seek a Show Cause Order to me is simply the culmination of that considered concern. I am convinced that he gave every possible opportunity to the current School Board majority to show that they were willing and able to perform their duties in a responsible, objective manner within the perimeter of their statutory authority.

The Honorable Martin L. Greenberg

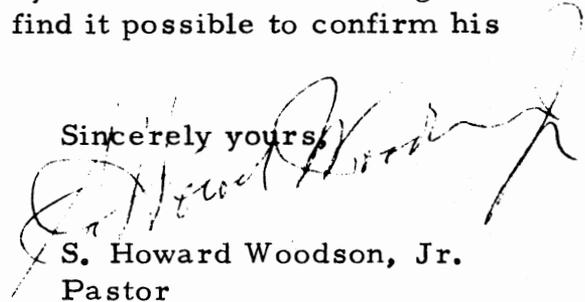
Page 2

March 28, 1979

When they failed, he had no alternative but to move against them with a threatened take-over. Commissioner Burke in this instance acted both with restraint and courage. It would probably have been easier to simply turn his back on a serious problem and save himself from becoming involved in what he knew to be a controversial issue. At the risk of the very opposition which has come from some representing the so-called school board majority, Commissioner Burke has shown intestinal fortitude to do what was right for the most important elements in the system; namely, the boys and girls whose entire future depends upon a viable quality education.

It is my hope that in your deliberations you will take these thoughts into consideration and, hopefully, you will find it possible to confirm his reappointment.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "S. Howard Woodson, Jr.", written in dark ink. The signature is fluid and somewhat stylized, with a large loop at the end.

S. Howard Woodson, Jr.
Pastor

ANTHONY CARRINO
COUNCILMAN-NORTH WARD
NEWARK, N. J. 07102

OFFICE:
350 BLOOMFIELD AVE.
NEWARK, NEW JERSEY 07107
483-5380

February 27 1979

920 BROAD ST.
CITY HALL
733-3753

The Hon. Martin Greenberg
Chairman
Senate Judiciary Committee
New Jersey State Senate
Trenton, New Jersey

Dear Sen. Greenberg:

As the chairman of the Senate Judiciary Committee and as one of two Newark representatives in the New Jersey Senate, your action on Gov. Brendan T. Byrne's nomination of Education Commissioner Fred G. Burke to a second five year term, will have far reaching effect on education in the state of New Jersey, and particularly in the City of Newark.

I urge you and the members of your committee to reject the governor's recommendation, based on the fact that most of the fiscal problems facing the Newark School System today, result from Commissioner Burke's decision to allow the Newark Board of Education to operate on a deficit budget for three years.

Not only did the commissioner allow the Newark Board to spend in deficit of \$4.6 million, which is clearly in violation of state law, he also took away the power of the Newark Municipal Council to mandate and control the annual appropriation to the school system's operating budget.

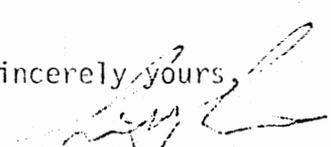
As a result the children and tax payers of Newark are made to suffer for whatever the political considerations may have been in allowing the deficit spending to exist. I believe that Mr. Burke's inaction on the Board of Education's deficit spending over a three year period created the problems which have now forced the layoff of 1700 teachers and non-instructional personnel.

If the commissioner had informed the Board of Education during the first year of deficit spending that it was violating the law, the board would have been forced to stay within its budget, and thus, would not have been able to fill vacancies left by attrition or create new jobs.

In urging your committee to turn down Mr. Burke's nomination, I do not wish to comment on his accomplishments or lack of accomplishment, I merely want to stress that he allowed the Newark Board of Education to operate illegally.

Nonetheless, I do not believe that there is enough confidence for Mr. Burke in New Jersey's educational community to allow him to continue effectively in his current position. So for the welfare of all New Jersey children, particularly those here in Newark, I believe a new commissioner should be appointed.

Sincerely yours,


Anthony Carrino
Councilman - North Ward

Jean S. Haddock P.O. Box 141 Scotch Plains New Jersey 07076

February 22, 1979

The Senate Judiciary Committee
Room 219
The State House
Trenton, New Jersey 08625

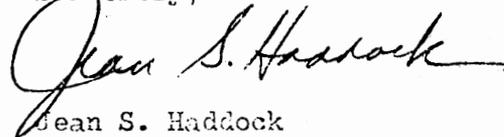
Dear Members,

Please add my name to the many people who want Dr. Fred G. Burke reappointed Commissioner of Education.

He has given fine leadership and support to Arts in Education programs in our New Jersey Public Schools.

Our students are better prepared for productive and meaningful life styles because art education "enriches the store of images that makes comprehension of concepts possible".

Sincerely,



Jean S. Haddock

JSH:cz

cc: Governor Brendan T. Byrne
Dr. Fred G. Burke

Worcester

632 Sherman Ave
Plainfield, New Jersey
March 9, 1979

To: Senate Judiciary Comm.
Trenton, New Jersey

Attention: John Lummally

Dear Sirs:

I oppose the reappointment of Frederick Burke to the position of Commissioner of education. My reasons are stated below, not necessarily in ascending or descending order of importance.

The Commissioner (Burke) is not only mediocre, to inept.

The Commissioner addresses himself to the "god of the children". He has ill-served the children of this state. He has manifested contempt and disdain for the productive residents of this state, namely the over-taxed taxpayers by supporting extravagant school budgets.

In spite of the popular notion (among many) that educational quality is commensurate

...the Board of the Committee
... 15, 1979, and that that

...will present me to present my views.

...we should try to change community

...the elected officials of my ward,

...the City of Parkfield, Ohio, and

...the Committee within the

...which may be important

...to the Board.

...to this matter

Respectfully,
Angela D. Brown

10/15/79

FRANK W. MAGOVERA
207 So. LAKE DR.
BELMAR N.J.

As a taxpayer, a parent, a grandparent and a 15 year member of a local school board, I have some thoughts on New Jersey Education:

I think it is disgraceful, with the thousands of dollars per student that NJ spends, that we rank among the lowest states in the union in educational standing.

I think it criminal that a local news media reports "teachers in our largest schools systems were advised to set low achievement standards so the schools' ratings would be higher" (SBN Dec 7, p2)

In the College Basic Skills Test 40% of NJ students failed to achieve satisfactory levels in English and Math (SBN Dec 21, pl).

I think the education commissioner's guidelines for the evaluation of tenured teachers indicating "pupil progress should not be a considering yardstick" is ridiculous (SBN Dec 14, pl).

Under the present commissioner we have decision making procrastination, vacillation in direction, and quite apparent capitulation to vested interests of voting strength.

All this on top of educational direction that has resulted in THE SAT scores of our students steadily declining year by year. When the present commissioner took over we had SAT Scores of verbal 445- Math 481 -- they are now ^{DOWN TO} 429 and 468 (^{AS OF} 1978). PROBABLY EVEN LOWER FOR 1979

I think that poor and delayed direction, Lack of integrity in FISCAL policies, and Overall decline of administrative efficiency, compounded by excessive absenteeism from the State, and even the County, has resulted in chaos in NJ Education. ^{AFTER ALL} Even Nero had the courtesy to stay in Rome.

CIVILITY

Statement on Commissioner Burke's Reappointment

My name is Samuel Morneweck and I am an elected member of the Cranford Township Board of Education. I oppose the reappointment of Mr. Fred Burke as Commissioner of Education because his indecisiveness has caused great problems for local Boards of Education. I will cite two examples of that indecisiveness.

Long delays in decisions on dismissal of tenured staff are costing our district and many others a lot of money. Here is a brief chronology of our case:

- Feb. 28, 1978 - Charges against tenured staff member certified by Cranford Board. Defendant begins 120 suspension without pay.
- Mar. 13, 1978 - Letter sent with responses to procedural questions raised by defendant's attorney
- June 29, 1978 - Full pay resumes for defendant
- Oct. 24, 1978 - Superintendent and Board members visit Division of Controversies and Disputes to ascertain reasons for delay. Heavy case-load cited; more than 50 cases against tenured staff awaiting action.
- Dec. 20, 1978 - Commissioner denies defendant's motion to dismiss and orders hearing
- April 23, 1978 - Current date set for hearing
- ca. July 1, 1978 - Final date (by law) for Commissioner's decision (60 days from end of hearing)

Thus our Board will have paid a year's salary, over \$20,000, to a person who has not worked in the system for 16 months. While it is not proper to blame all the delay on the Commissioner, clearly nine months of it (March 13 to December 20) are his direct responsibility.

If, in fact, we get the decision by July 1, we will be luckier than the average district in the state. According to a New Jersey School Boards Association survey it takes 21 months for the average contested tenure case to be decided by the Commissioner. If there are usually 50 cases pending, as there were last October, a little arithmetic shows that these delays are costing taxpayers around \$ 1 million per year for salaries for suspended employees.

The Commissioner's erratic decisions on cap waivers make it difficult for Boards of Education to plan their budgets. In the first year the Commissioner granted nearly all waiver requests; in the second year fewer requests were granted; now in the third year requests from certain districts are ruled out in advance.

This inconsistency would have been a serious problem for our district if we had not had surplus funds to use. We do not offer a luxurious education, but we try to offer enough variety to meet the diverse needs of our students. Even though we have reduced our course offerings our budget is still over the caps. Without our surplus we would be waiting from year to year to see what the new groundrules were going to be on cap waivers before we could plan our budget.

While I am unhappy about the inflexibility of the cap law in times of economic uncertainty, at least they are clear and consistent. It is imperative for districts like ours that the Commissioner be equally clear and consistent in his decisions on cap waivers.

Mr. Burke has shown an unwillingness to be prompt, clear and consistent with his decisions. That presents many problems for me as a member of a Board of Education. Thus I must strongly oppose his reappointment to this office.

Samuel T. Morneweck

Samuel T. Morneweck
28 Dartmouth Road
Cranford, NJ 07016



**common
cause** NEW
JERSEY

28 WEST STATE STREET, RM. 910, TRENTON, NEW JERSEY 08608
715



609-396-1150

March 19, 1979

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: Lucy Mackenzie, Executive Director
New Jersey Common Cause

Mr. Chairman and members of the committee, on behalf of New Jersey Common Cause I would like to thank you for this opportunity to express our concerns about a matter touching upon the administration of the Department of Education.

Common Cause has no position or point of view with regard to the professional qualifications of Dr. Burke for reappointment as Commissioner of Education. However, we do have grave concerns about the procedures used by the Department in overseeing the disbursement of public funds to Career Development Associates, Inc.

As you know, we have traditionally been concerned with open and responsive government and problems of conflict of interest. Many months ago, we began to take notice of the clash of opinions about the propriety of the membership of Robert Worthington, Chairman of Career Development Associates, Inc., on the New Jersey Advisory Council on Vocational Education. Since that time, we have become increasingly alarmed as charges of manipulation of funds have appeared in the Newark Star Ledger.

At his request, we met last week with Dr. Burke to discuss these charges. More than two hours spent in discussion primarily of the Burlington County project served only to deepen the mystery. In cases where a local official makes a statement and the Commissioner says that he is lying, we cannot determine the truth. Dr. Burke's assertion to us that it is his policy not to respond to the press and that in this case it would have done no good because the Star Ledger is "out to get him" injects another alarming element into this very confused situation.

And so we heard with some relief that the Attorney General will investigate the entire affair. Many questions need to be answered. Because of this proposed investigation, I will not comment further on details of our conversation with Dr. Burke. We hope that the facts will be made public as soon as possible, because the public rightly expects a high degree of accountability from its public officials, both elected and appointed. We have written to the Attorney General about our major concerns in this area, and will eagerly await his answers to these and other questions.

We especially commend this committee for its decision to delay its vote on the nomination of Dr. Burke. Last week, I had planned to ask you to make this decision. Senator Greenberg's comment about the unusual importance of this appointment reflects our own feelings. We appreciate your sensitivity to the need for a full disclosure of the facts, and urge you to withhold action until the full disclosure is made.

Memorandum

Statement

From - Peter Contardo member Trenton Board of Education
To - New Jersey State Senate Judiciary Committee.
Re - Appointment of Fred Burke, Commissioner of Education
Date - March 19, 1979.

I support Governor Byrne's choice of Commissioner Burke and urge the Committee to do the same.

I am a senior citizen, in my third term as a Board member - Since I am only partially employed (semi-retired) I have had ample opportunity to keep abreast of the many problems in public education and efforts to provide solutions.

As Commissioner charged by law to supervise public education Fred Burke has discharged that duty with distinction.

His chief critic Senator Dodd described him as "honest, decent, dedicated". He is also competent, professional and a skilled executive.

Early in his term he spent time as a classroom teacher at Trenton High School to experience first hand the special problems of an inner city school.

A few years ago when I proposed strengthening of the State Department of Education's services in employee + pupil safety he enlisted the aid of community minded safety engineers, who served without remuneration to help his staff develop safety standards, rules and regulations.

In the Spring of 1978 he assigned a task force to the Trenton Board of Education to assist the Board and Administration to remedy deficiencies in a number of areas. Serving in a purely advisory capacity and obviously following parameters, principles and approaches he authored, the group completed its tasks without in any way eroding or threatening to erode local control. Their performance can be described as excellent which certainly reflects credit on the Commissioner.

When the Task force had left the Trenton district and a successor Board's actions and inactions created grave doubts about the ability and willingness of the Trenton Board of Education to comply with state regulations, Commissioner Burke gave it the opportunity to defend itself against possible intervention by initiating a show cause procedure.

The Commissioner has been visible - He has visited urban, suburban and rural schools not as a celebrity but as a Teacher interested in children and the problems of Teachers, administrators, other employees and parents.

He has been fiscally responsible and consistently focused attention on the need of school districts to make maximum efficient use of resources.

He has not abused the powers of his office and has meticulously respected the principle of local control. However in strengthening the office of County Superintendent he is providing the kind of staff assistance and monitoring which makes it possible for local boards to more effectively attain the objectives of T + E.

The Commissioner's primary concern has been the quality of instructional delivery provided by each school to meet the ordinary and extraordinary needs of each child.

His recent request that Boards of Education allocate more of their funds to Teacher-in-service Training is an effort to improve education by developing better Teachers.

The late John J. Raskob when asked his formula for success replied he had none but he knew what caused failure in leaders - He said a leader who tries to please everybody was sure to fail.

Commissioner Burke has not pleased everyone nor has he attempted to do so. I believe strongly he has exhibited a high order of integrity when making decisions. His experience under fire, and his honesty, decency and dedication will serve New Jersey well - I urge his re-appointment for another 5 years.

Middlesex Public Schools

MIDDLESEX, NEW JERSEY 08810

201 - 938-0165

Dr. Virginia L. Brinson
Superintendent

March 22, 1979

Senator Martin L. Greenberg, Chairman
Senate Judiciary Committee
State House
Trenton, New Jersey

Dear Senator Greenberg:

I would like to take this opportunity to express my support for the reappointment of Dr. Fred Burke for Commissioner of Education. In times of economic chaos, stability and insight are needed. In times of educational change and resultant turmoil, continuity and coordination are essential. I believe Fred Burke can provide the stability, insight, and continuity needed for continued progress in the educational systems in our state.

The past five years have been particularly difficult ones. Implementation of a state-wide comprehensive educational plan like T&E is a tedious, complicated task; implementing the plan during economic chaos adds tones of impossibility. With these barriers as a setting, it is phenomenal that any progress was made. Dr. Burke should be praised for the progress he has made rather than blamed for specific areas that have not met the expectations of some people.

Give Fred Burke the chance to build upon the foundation he has laid.

Sincerely yours,

Virginia L. Brinson
Dr. Virginia L. Brinson
Superintendent of Schools

VLB/gk

cc: Entire Judiciary Committee

Tumulty

COSUN



New Jersey Council Of Organizations To Strengthen the United Nations, Inc.

P.O. BOX 4068, AMPERE STATION • EAST ORANGE, N. J. 07019 • TEL. 201-674-4959

March 21, 1979

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Gerald Mische
(Global Education Associates)
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(World Federalists, N. J. Branch)

Corresponding Secretary
Joy Williams
(United Nations Association,
USANJ)

Mr. John Tumulty
Senate Judiciary Committee
Room 219
The State House
Trenton, New Jersey 08625

Dear Mr. Tumulty:

At the Administrative Board meeting of NJ COSUN on March 10, 1979, one of the subject matters discussed at some length was the Senate Judiciary Committee hearings scheduled in Trenton with regard to the reappointment of Commissioner Fred Burke.

For the past seven years a major thrust of this organization has been to work within the system toward the goal of getting global perspectives taught in the schools of New Jersey K-12. We believe this is necessary so that our children will be able to cope more effectively in the real world they will enter upon graduation from high school. It is also crucial for our nation so that our citizens can play a more constructive role in helping to monitor our country's foreign policy.

It is our experience in recent years that Commissioner Burke is extraordinarily qualified to help our children and our state accomplish these ends. At the March meeting of NJ COSUN a resolution was unanimously passed urging that Commissioner Fred Burke be reappointed. We trust that the Senate and the State Board will agree.

Very truly yours,

Ernest Kerstein

Ernest Kerstein
Chairman
Education Committee

EAK:br
cc: Gov. Brendan Byrne

59X

Matawan-Aberdeen Regional School District
1200 565 1800

1200 AND SOUTH STREET

MATAWAN, NJ 07747

March 21, 1979

The Hon. Martin L. Greenberg
State House
Capitol Complex
Trenton, New Jersey 08625

Dear Sir:

I would like to take a moment of your time to ask you to convey to the Senate Judiciary Committee some of my thoughts regarding Dr. Fred G. Burke's reappointment to the Commissionship of the Department of Education for the State of New Jersey.

During my eight years as a Superintendent in the State of New Jersey, the first seven of which were spent in the North Hunterdon Regional School District in Hunterdon County and this past year in Matawan, New Jersey, I have had the opportunity to be a witness to, and take a part in, some dramatic changes in our public school system. During the past eight years, seven of those years were spent working on the Executive Committee of the New Jersey Association of School Administrators. This Association made it possible for me to work closely, first with Dr. Carl Marburger who was Commissioner when I arrived in the State in 1971, and with Dr. Burke from 1974 up to the present time. Both Commissioners, with considerable involvement of the Legislature, Courts, and various segments of the educational community at large, pushed New Jersey out front. We have remained on the cutting edge of an almost revolutionary effort to provide an equal educational opportunity for all of our youth. Dr. Marburger met the challenge of racial equality and paid the price because there were those who were unwilling to openly face that issue. Today we are faced with a similar set of circumstances with some of the old issues and a new set of problems. The scenario is very familiar.

Robinson vs. Cahill gave birth to Chapter 212, the Laws of 1975, and Dr. Burke has been given the awesome responsibility of implementing legislation which is truly revolutionary and equally vague in many respects. In my judgment and in the judgment of many of my colleagues, he has lived up to our expectations

March 21, 1979

in his struggle to put in place, in a highly charged political atmosphere, those human resources needed to meet the challenge which the legislature and the courts have thrust on our Boards of Education, administrative and teaching staffs. Probably no man has faced greater pressure than Fred Burke during these past five years. He has dealt with the vast complexities of a diverse State which has historically prided itself in home rule, while at the same time, he has stood accountable to the Legislature and the public which he serves in his and our quest for solutions to the problems of dwindling resources, high taxes and, in many cases, unreasonable demands for simplistic answers to complex issues that plague most of the States in our Country today.

One cannot blame the Commissioner for the drug problem that now exists in our society nor can he be blamed for the multitude of learning problems that children have which emanate from uncontrolled environments and abuse and neglect in the homes. Through Commissioner Burke's efforts and under his leadership, we are presently implementing a T&E Law that will upgrade our public schools. This law was conceived and developed by a legislature committed to the improvement of educational quality in our State. It is now being implemented by a Commissioner who stands alone at times in making it happen. I know from personal experience that my school district has already benefited vastly from the monitoring experience provided by our County Superintendent and his staff. We have an improvement plan in the works and within a year a number of deficiencies will be corrected. I am sure this is happening now all over the State of New Jersey. The process, however, is irritating to those who need help but are unwilling to admit that they have weaknesses in their programs. Many find it easier to complain than to address the problem which, in effect, is a smoke screen for serious deficiencies that exist in many of our school districts.

Senator, we are at the crossroads in our quest to improve the quality of education in New Jersey. Fred Burke is by far the best man to see us through these next five years. He can provide the atmosphere, the direction, the challenge that we need so badly. He knows how to stand up on an issue and he knows how to bring people together. He also knows how to create a spirit of competitiveness that has allowed us to struggle internally to meet the challenges in our respective school districts. As ironic as it might seem, the question probably should not be, "Does New Jersey want Fred Burke?" The question should be, "Does Fred Burke really want New Jersey?" A lesser man would probably have given in a long time ago to some of the vendettas that have been thrust upon him by those who seek to undermine his efforts for perhaps their own personal gain whatever that might be. It is our hope that the Judiciary Committee will see through this effort to discredit a man who has given so much of his life to our fine State. We urge you, therefore, to move his name for confirmation and let us get on with the job ahead.

Sincerely yours,


Kenneth D. Hall
Superintendent

MDH/jt

UKRAINIAN CONGRESS COMMITTEE of AMERICA

COORDINATING COUNCIL

STATE OF NEW JERSEY

240 HOPE AVENUE, PASSAIC, N. J. 07055

March 14, 1979

Senator Martin L. Greenberg
Chairman, Senate Judiciary Committee
State of New Jersey
100 Evergreen Pl.
East Orange, NJ 07018

Dear Senator Greenberg:

Currently your Senate Judiciary Committee is conducting hearings on the renomination of Dr. Fred G. Burke, as the Commissioner of Education. To be considered as evidence, I would like to bring to your attention the prevailing inaccurate and distorted description of the many nationalities in the USSR as contained in the officially approved curriculum material in our public schools. The following will serve to illustrate the problem.

In a Superintendent's Bulletin we read: "Our seventh grade students visited the Ukrainian church ... to learn about the history and culture of ...Russia."

In a supplementary teaching outline, "The Individual Relating to the Challenge of Our Time: Prejudice and Discrimination" - Ukrainian Americans, one of the referenced textbooks is: "The Story of the Soviet Union," by Joan S. Crane and John B. Crane, (McCormick-Mathers Global Culture Series, 1969).

On page 6 states: "...all students study Russian...to realize that we are all Russians. And we love our country Mother Russia.

On page 8 states: "Russia is divided into areas called Soviet Republics."

In a TV program, "THE UNKNOWN WAR" - Kiev, the capital of Ukraine is advertised as "Russian City," the Soviet army is referred to as the "Russian" army, the invasion of Ukraine by the German Nazi Army is presented as the invasion of "Russia." People, areas and cities of Ukraine are labeled as "Russian"

"To promote the educational, informational or motivational content of television programs... " - National Education Association has worked over two years with the executive producer of this program.

NEA has recommended, endorsed and defended this program. When NEA was asked about the inaccuracies, they stated: "Although we are concerned and acknowledge the correctness of your views in this matter, the practice of referring to the many Soviet peoples as "Russians" has become common coinage... ."

As related to the study of the multinational USSR, common coinage and mediocrity has become the accepted standard of excellence in our public school system.

American children, whose heritage is derived from the many nationalities now encompassed in the Soviet Union, are being constantly and conscienciously deprived by our public school system, of their cultural, national and religious ancestry - solely because of their national origin and solely because they are not of Russian descent.

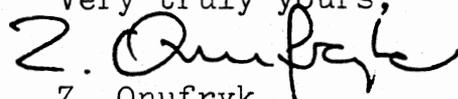
Yet - Title VI of the Civil Rights Act of 1964 (P.L. 88-352) clearly states: "No person in the United States shall, on the ground of ... national origin ... be denied the benefits of, or be otherwise subjugated to discrimination under any program or activity"

On January 22 1979, commemorating the aspiration of the Ukrainian people to self identity and self determination and recognizing the need to comply with the Civil Rights Act and with the need for accurate and fair teaching in our public schools, the Senate of the State of New Jersey passed the following unanimous resolution:

" ... To reflect upon our perception and undestanding of the Ukrainian people, and their religious, cultural and historic identity, and the national aspirations, as well as the plight of all others subjugated people under the domination of the Soviet Union ...

... this House requests and encourages the Governor to direct the Department of Education to review the curriculum, textbooks and programs used within the various school districts as they relate to the study of the Soviet Union and Ukrainian and other captive people."

I am asking you, Senator Greenberg, and the members of the Senate Judiciary Committee to obtain from the Commissioner of Education the commitment of his Office to implement this unanimous will of the Senate.

Very truly yours,

Z. Onufryk,
Public Affairs Commission



