**U.S. Department of Education**

**Negotiated Rulemaking**

**Title I, Part A of the ESEA  
as Amended by the Every Student Succeeds Act**

**Meeting Summary**

**April 18-19, 2016**

The third and final session of the ESSA Negotiated Rulemaking commenced at approximately 9:00 am on April 18, 2016, as scheduled, and adjourned on April 19, 2016, at 5:00 p.m. Negotiators for all constituencies and the facilitator were present.

**Welcome**

Ann Whalen, Senior Advisor to the Secretary, Delegated the Duties of the Assistant Secretary, Office of Elementary and Secondary Education, welcomed the members of the Committee to the third negotiated rulemaking session. She thanked them for their hard work and commitment to assisting the Department in developing proposed regulations to implement the Every Student Succeeds Act.

**Review Agenda**

Susan Podziba, the facilitator, reviewed the agenda. It was adopted with no changes.

**Regulation Development Process after Negotiated Rulemaking**

Kay Rigling, Department of Education Counsel, reviewed the section of the Committee’s organizational protocols pertaining to consensus agreements. She explained that if the Committee reaches consensus, the Department will use the consensus regulatory text as the basis for its Notice of Proposed Rulemaking (NPRM). If the Committee does not reach consensus, the Secretary may still issue proposed regulations. If he does, he must provide the proposed regulations to relevant congressional committees, which will have 15 business days to provide comments before the proposed regulations are published; those comments will be reflected and addressed by the Department in the public rulemaking record. The Department will then publish an NPRM. In both instances, the Department will consider public comments received on its NPRM, and then publish a final rule.

**Review and Approve Summary of Session Two**

The Committee members approved the meeting summary with no changes.

**Discussion of Issues and Draft Regulatory Language**

The Committee discussed and reviewed draft regulatory language in great detail for all issues within its scope, which are listed below. Members offered and considered many proposals for each issue.

* **Assessment**

Issue #1: Computer adaptive testing

Issue #2: Exception for advanced mathematics assessments in 8th grade

Issue #3: Locally selected, nationally recognized high school assessments

Issue #4a: Inclusion of students with disabilities in academic assessments

Issue #4b: State administration of alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, subject to a cap of 1.0% of students assessed for a subject

Issue #5a: Inclusion of English Learners in academic assessments

Issue #5b: Inclusion of English learners in English language proficiency assessments

Issue #6: Updating existing regulations

* **Supplement not supplant**

**Consensus Approvals**

**Assessment: Final consensus was reached on all assessment issues on April 19, 2016 at 3:25 PM EDT.** The Department will use the consensus-based language in its proposed regulations, and Committee members will refrain from commenting negatively on the proposed assessment regulations published in the *Federal Register.*

**Supplement not supplant: No consensus agreement was reached on this issue.** As time wound down on the negotiations, Committee members expressed dissent on the last proposals offered for outstanding sections of this issue. As a result, the negotiations concluded without final consensus on the issue of supplement not supplant. In accordance with the Committee’s organizational protocols, the Department is not obligated to use any of the negotiated language in a Notice of Proposed Rulemaking, and Committee members are free to comment negatively on any proposed supplement not supplant regulations published in the *Federal Register*.

# Public Comment

# Opportunities were provided at the end of each meeting day for members of the public in attendance to provide comments.  No public comments were made during the meeting.

**Conclusion**

Committee members, the Department of Education, and the facilitator congratulated the Committee on achieving final consensus on the assessment issues, and expressed their appreciation for the hard work undertaken by all members. The Department also expressed appreciation for the multiple perspectives and concerns identified during negotiations of the supplement not supplant issue.

**Next Steps**

The Department will distribute electronic versions of the final consensus regulatory text for the assessment issues and post the consensus-based language on its website. The facilitator will distribute the approved summary of meeting two and a draft summary of meeting three for review and approval via email.

**Members Present**

**Non-Federal Negotiators**

Thomas Ahart

Rita Pin Ahrens

Kerri Briggs

Derrick Chau

Marcus Cheeks

Lara Evangelista

Tony Evers

Janel George

Regina Goings

Lynn Goss

Ron Hager

Leslie Harper

Audrey Jackson

Aqueelha James

Liz King

Lisa Mack

Eric Parker

Richard Pohlman

Delia Pompa

Mary Cathryn Ricker

Ryan Ruelas

Alvin Wilbanks

**Federal Negotiators**

Patrick Rooney

Ary Amerikaner

Kay Rigling, Counsel

**Facilitator**

Susan Podziba