

**U.S. Department of Education
Negotiated Rulemaking Committee — Title I, Part A of the ESEA
as Amended by the Every Student Succeeds Act**

Organizational Protocols

I. Mission Statement

The U.S. Department of Education (ED) has established this negotiated rulemaking committee to develop proposed regulations on certain topics under title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).

II. Purpose

The negotiated rulemaking process brings together Federal, State and local administrators, tribal leaders, parents and students, teachers, principals, other school leaders, paraprofessionals, and the civil rights and business communities to discuss and negotiate draft regulations. The purpose of negotiated rulemaking is to improve the substance of regulations; increase understanding of, and support for, those regulations; and encourage affected parties to communicate with each other and share information, knowledge, and expertise.

III. Participation

A. The committee consists of the following members:

Constituency	Negotiators
U.S. Department of Education	Patrick Rooney
	Ary Amerikaner*
State administrators and State boards of education	Tony Evers, Wisconsin Department of Public Instruction
	Marcus Cheeks, Mississippi Department of Education
Local administrators and local boards of education	Alvin Wilbanks, Gwinnett County Public Schools, Georgia
	Derrick Chau, Los Angeles Unified School District, California
	Thomas Ahart, Des Moines Public Schools, Iowa*
Tribal leadership	Aaron Payment, Sault Ste. Marie Tribe, Michigan
	Leslie Harper, Leech Lake Band of Ojibwe, Minnesota*
Parents and students, including historically	Lisa Mack

underserved students	Rita Pin Ahrens
Teachers	Audrey Jackson, Boston Public Schools
	Ryan Ruelas, Anaheim City School District, California
	Mary Cathryn Ricker, St. Paul Public Schools, Minnesota/ American Federation of Teachers*
Principals	Lara Evangelista, New York City Public Schools
	Aqueelha James, District of Columbia Public Schools*
Other school leaders, including charter school leaders	Eric Parker, Montgomery Public Schools, Alabama
	Richard Pohlman, Thurgood Marshall Academy*
Paraprofessionals	Lynn Goss, School District of the Menomonie, Wisconsin
	Regina Goings, Clark County School District, Nevada*
Civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students	Delia Pompa, Migration Policy Institute
	Ron Hager, National Disability Rights Network
	Liz King, The Leadership Conference on Civil and Human Rights*
	Janel George, NAACP Legal Defense and Educational Fund*
Business community	Kerri Briggs, Exxon Mobil
	Kenneth Bowen, Office Depot*

* alternates

B. In addition to the members of the negotiating committee, the following individuals will support the work of the committee in reaching consensus:

Facilitator	Susan Podziba, Podziba Policy Mediation
Department of Education Counsel	Kay Rigling, Deputy Assistant General Counsel Division of Elementary, Secondary, Adult, and Vocational Education, Office of the General Counsel
Supplement not supplant experts	Karen Hawley Miles, President and Executive Director, Education Resource Strategies

Assessment experts	Courtney Hitchcock, Principal Associate, Education Resource, Strategies
	Martha Thurlow, Director, National Center on Educational Outcomes
	Kenji Hakuta, Lee L. Jacks Professor of Education, Emeritus, Stanford University Graduate School of Education
	Peggy Carr, Acting Commissioner, National Center for Education Statistics, US Department of Education

- C. All members of the committee may speak during the negotiations. Each member not designated as an alternate will participate for the purpose of determining consensus. A member designated as an alternate will participate for the purpose of determining consensus in the absence of a member of his or her designated constituency.
- D. The committee may add members. Requests for membership must be made at the beginning of the first session, on March 21st, 2016, and must be approved by a consensus of the committee members, as defined in these protocols. To be considered by the committee, the individual must be among the individuals or groups that provided advice and recommendations in response to ED’s Request for Information published on December 22, 2015.¹ New members may begin to participate immediately upon admission to membership.
- E. Subcommittees may be formed by the committee, at the request of any member, to address specified issues and to make recommendations to the committee. Subcommittees are not authorized to make decisions for the committee. Subcommittee meetings will be open to any member of the committee and may be held between the meetings of the committee. All committee members will be notified of all subcommittee meetings.
- F. Upon the initiation by any member and after consultation with the facilitator, the Secretary may remove a member he determines is not acting in good faith in accordance with paragraph IX.B of this protocol. In such a case, the Secretary will provide an explanation in writing to the member and the committee.
- G. The Secretary may remove any member who ceases to be employed by or associated with the constituency the individual was chosen to represent.

IV. Participant Roles

- A. Committee members are responsible for:
 - 1. Participating in committee meetings to ensure that the interests the member represents are considered;

¹Any new member must not have a conflict of interest that would prevent the individual from engaging in the negotiations in good faith.

2. Working to reach consensus on the issues before the committee; and
3. Participating in subcommittees and/or caucuses, as needed, to develop options to bring before the entire committee.

B. The facilitator will be responsible for:

1. Chairing the meetings in an impartial manner;
2. Assisting committee members in conducting discussions and negotiations to ensure that the meeting proceeds in an orderly manner;
3. Developing the meeting agenda in consultation with members of the committee;
4. Helping the parties to resolve their differences and achieve consensus on the issues to be addressed by the committee;
5. Facilitating all committee meetings and subcommittee meetings and caucuses, to the extent possible; and
6. Maintaining records of agreements and disagreements.

C. Experts are responsible for:

1. Answering questions posed by committee members; and
2. Providing information to clarify or ensure accurate understanding of issues within the scope of the negotiations.

V. Decision Making

The committee will operate by consensus, meaning that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations about the approach or solution that is proposed for consensus. Absence or abstention will be equivalent to not dissenting. All consensus agreements reached during the negotiations will be considered tentative until members of the committee reach final agreement on regulatory language. Once final consensus is achieved, committee members may not withdraw their consensus.

VI. Agreement

- A. The goal of the committee is to develop written, proposed regulations that reflect a final consensus of the committee.
- B. If the committee reaches a final consensus on the issue of supplement not supplant or the issue of assessments, or on both issues, ED will use the consensus-based language in its notice of proposed rulemaking and the committee members will refrain from submitting any negative comments through the public comment process on the consensus-based language of the proposed rule. If a member nevertheless submits a negative comment on the consensus-based language, ED is under no obligation to respond to the comment in the final rule.

- C. If the committee reaches a final consensus on the issue of supplement not supplant or the issue of assessments, or on both issues, all published proposed regulations on the issues for which consensus was reached shall conform with the consensus-based language unless ED reopens the negotiated rulemaking process.

VIII. Committee Meetings

- A. The facilitator will maintain a clear and reliable record of tentative and final agreements reached during the negotiation process. The draft meeting summaries will be provided to members, who may share them with others within their constituency. After review and approval by the committee, this record will be made available to the public.
- B. The committee meetings will be transcribed. A transcript of the committee meetings will be made available to the public at the end of the negotiation process. Subcommittee meetings and caucuses will not be transcribed.
- C. ED will make every effort to distribute materials to committee members in a timely fashion in advance of committee meetings.
- D. A caucus for the purpose of consultation may be requested of the facilitator at any time by any member.
- E. All committee meetings, but not subcommittee meetings or caucuses, are open to the public.

IX. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time, by notifying the facilitator in writing.
- B. All members and the organizations they represent shall act in good faith in all aspects of these negotiations.
- C. In the interests of promoting free and open conversation as well as collegial decision-making, contact with the media and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations. Members should refrain from characterizing the views, motives, and interests of other members during contact with the media, other organizations outside the community of interest represented by the member, and to the general public through social media.