

# **Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING**

**Date: March 23, 2016**

**Case: U.S. DEPARTMENT OF EDUCATION IN RE:  
NEGOTIATED RULEMAKING**

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1 March 23, 2016

2 ESSA negotiated rule-making session.

3

4 Ms. Podziba: My apologies we need to  
5 revisit the proposal to form a subcommittee  
6 that came up yesterday at the very end.

7 According to our protocols a subcommittee is  
8 of the committee, and therefore the committee  
9 needs to decide whether or not to form it.

10 If you want to look at it, its section on

11 participation paragraph E refers to

12 subcommittees. So what I would like to do is

13 ask Mary Cathryn to make a proposal to form a

14 subcommittee, and we will see if there's

15 agreement among the members to do it. I just

16 want to say a subcommittee is formal we have

17 the rules about notifying people and

18 everybody can participate in it, so there are

19 subcommittees and there are offline groups of

20 people who get together to discuss an issue.

21 I just want to differentiate between those

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1 two.

2 Ms. Ricker: Thank you so much. I  
3 actually have no particular expertise. The  
4 proposal happened earlier in the day by Rita  
5 and I felt like we hadn't really flushed out  
6 what Rita's requests. I will pass it along to  
7 Rita who had initially brought up the idea to  
8 a subcommittee.

9 Ms. Pin Ahrens: I think the proposal  
10 was to create a subcommittee to look at the  
11 definition's that are currently existing  
12 within the states for students with the most  
13 significant cognitive disabilities, and to  
14 come up with a shared or common definition  
15 that would be considered for the regulation.

16 If I understand the proposal is to,  
17 the proposal is for subcommittee to develop a  
18 proposal to the committee regarding a  
19 definition of students with the most  
20 significant disabilities. So is there a  
21 discussion? -- Susan:

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1           Mr. Payment: I would suggest the  
2 manner we do this. I like the idea, I would  
3 like for the committee to consider the  
4 subcommittee to consider the pros and cons  
5 along with substance of it. Because  
6 sometimes when you define it then states will  
7 come right up to the line and they won't go  
8 past the line. We don't want to unduly limit  
9 it. Not defining it might mean they define  
10 it on their own that might be one of the  
11 questions I would like to ask the committee  
12 to consider. Whether you know it or not is  
13 based on the air-koi Confederacy great law of  
14 peace which is consensus building which is  
15 methodology. Given that we have a big  
16 committee and I don't want the subcommittee  
17 to work on a bunch of stuff that comes back  
18 here and we pick it apart and throw it away  
19 that's from experience with council. If you  
20 have a subcommittee and if you work via  
21 conference call that you invite everybody to

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1 participate, but it would be the people that  
2 have the most interest of course that would  
3 be the ones that would chair the committee or  
4 lead the committee or that you circulate the  
5 conference call information, so everybody can  
6 participate so we are on the same page and we  
7 are not rehashing it once we come back  
8 together.

9           Ms. Podziba: That's in our protocols  
10 that all members are invited to participate  
11 in a subcommittee and we will provide  
12 notification of all meetings two to three  
13 days before if practicable. On the question  
14 of forming a subcommittee as described by  
15 Rita is there any dissent from forming that  
16 subcommittee?

17           Mr. Wilbanks: I don't necessarily  
18 want to dissent, I mean, if they want to meet  
19 and discuss, I question the need for the  
20 definition.

21           Mr. Evers: Somewhat the same. I am

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1 not sure there's a need for a definition and  
2 going back to kind of narrow view of where it  
3 also is not something that's explicitly  
4 authorized by the law, so I am concerned as a  
5 subcommittee does some work I will be sitting  
6 back here saying I don't know about that  
7 because of that reason. That's my thought.

8 Ms. Podziba: Should I take there is  
9 a dissent, which means there would be no  
10 formal subcommittee?

11 Mr. Payment: So I would like to  
12 offer -- I am not sure if the order of this  
13 process. It would be a friendly amendment  
14 which you can out without objection if the  
15 subcommittee purpose is to first consider the  
16 pros and cons of further dividing severely  
17 cognitive terms, and if it's needed and you  
18 have that as a primary question, and then if  
19 there seems to be unanimity to move forward  
20 and then that addresses the gentleman's  
21 concerns.

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1 Ms. Podziba: With that friendly  
2 amendment is there a dissent from forming a  
3 subcommittee? Okay, there is not. There  
4 will be a subcommittee and who will take  
5 responsibility for scheduling and notifying?  
6 Who will be on that committee let's get the  
7 names of the people who will be on that  
8 committee? Ms. Pin Ahrens, Mary Cathryn.  
9 Mr. Payment, Ms. King, Mr. Hager, Ms. Goings,  
10 Ms. Mack, Ms. Briggs. Okay. Can the  
11 Department help schedule a call and a call in  
12 number for them?

13 Mr. Rooney: We can provide a  
14 conference line. Is there a person on the  
15 committee we should talk to or should we just  
16 send to it all the people on the committee?  
17 I'm not sure the process at this point.

18 Ms. Podziba: We will work out the  
19 logistics. These are the members that have  
20 identified themselves. The whole committee  
21 will be notified when that conference call

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1 happens. Okay. Thank you. Patrick, I think  
2 we are ready to move forward onto issue 5 A.

3           Mr. Rooney: So issue 5 A and 5 B are  
4 how we include English learners in the  
5 state's assessment system. 5 A is around the  
6 inclusion of English learners and the  
7 academic in the reading, math, science and  
8 arts assessments. Later this morning we will  
9 talk about 5 B, which states English language  
10 proficiency assessment. For now we want to  
11 focus on the academic assessments before we  
12 start we ask Kenji to say a few words about  
13 the English learner assessment system before  
14 we dig into the conversation.

15           Mr. Hakuta: So good morning I would  
16 like to start by giving you some general  
17 background on English language learners  
18 addressed in elementary and secondary  
19 education act in the ESSA that led up to  
20 where we are today. Let me just ask Patrick  
21 then I have a few preparatory remarks for 5A

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1 and I can go into that as well?

2 Mr. Rooney: I think that will be  
3 helpful.

4 Mr. Hakuta: One will be the general  
5 background on ESSA and to 5A. So one thing  
6 to note is just the changing demographics of  
7 English learners and the progressive  
8 inclusion of English learners of ESEA over  
9 time. It started back in 1968 with the  
10 amendment to add title 7 as an education act  
11 in 1968 and comes to this date, and as the  
12 through successive reauthorizations the  
13 population of English learners has grown and  
14 changed over time so that today the, you  
15 know, the numbers are really just made up  
16 numbers in a sense that states vary in their  
17 criteria and so forth, but any estimate  
18 that's given this date given somewhere around  
19 the five million plus range as well as maybe  
20 in almost an equal number of students who are  
21 formerly classified as English learners and

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1 having been classified. It's a significant  
2 number over time. During that time ESEA has  
3 changed from initially essentially grant  
4 programs to districts, and to states to the  
5 standards base framework reform that we see  
6 today as well as the development of  
7 accountability around assessments by states  
8 and issues of inclusion of students in  
9 accountability. In 1994 which was the  
10 improving America's schools act that's when  
11 standards base reform came into play and the  
12 inclusion provisions through language that's  
13 still part of ESEA that academic assessment  
14 being conducted in a language and for more  
15 most likely The focus moved away from a  
16 bilingual education which is instructions  
17 through the native Language and up to that  
18 point, and with standard based reform became  
19 more focused on inclusion in the standards  
20 based reform. And then it's noteworthy that  
21 2001 with no child left behind that we gain

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1 accountability in separate requirements for  
2 English language proficiency assessments  
3 aligned to the state standards in English  
4 language proficiency which led to the  
5 development of assessments in English  
6 language proficiency that we see in title  
7 three. That's what came in no child left  
8 behind. The quality of assessments both in  
9 academic assessments and in English language  
10 proficiency need to be viewed in light of  
11 these historical at ESEA moves decisions from  
12 accountability to states and the  
13 characteristic is the inclusion of English  
14 language proficiency assessment in title one  
15 and accountability and which really in a  
16 sense completely had full New Mexico English  
17 learners represented in the successive  
18 changes in the ESEA, and so that's really  
19 noteworthy and the final note around context  
20 and trends there is a renewed interest now in  
21 various forms of native language instruction

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1 or bilingual education, two way immersion  
2 programs and states sale by literacy that is  
3 adopted by 18 states as well as continued  
4 efforts and revised native Indian languages.  
5 When thinking about native assessments in the  
6 language there's a couple of comments in the  
7 inclusion of academic assessment which is a  
8 topic of 5A which is how to make assessments  
9 and literacy and math and science as valid as  
10 possible for students included in the  
11 accountability system, and this is a quote  
12 from the law to the extent practicable  
13 assessments in the language and form most  
14 likely to yield accurate data in what EL's  
15 known in content areas such as math, reading,  
16 language and science until student's achieved  
17 English language proficiency, so there's also  
18 question of whether the states should make  
19 academic assessment available through the  
20 student's native language. There is a  
21 growing literature in accommodation practices

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1 such as extended time, availability and  
2 glossaries and dictionaries made possible  
3 through technology read aloud instructions  
4 that illustrate best practices for  
5 accommodation for EL's that should be made as  
6 widely available as possible. We also sort  
7 of know now that assessment through the  
8 native language, the assessments conducted in  
9 native language will benefit students, but  
10 only really appropriate for those who are  
11 newcomers from those languages or those who  
12 are receiving instruction through the native  
13 language, so even if your language, language  
14 proficiency may not be perfect if being  
15 assessed in the native language if you are  
16 not instructed in the academic language of  
17 non-English language would not help those  
18 students as much as we would like. So the  
19 final point I would like to make that these  
20 accommodation practices of student academic  
21 achievement have been operationalized at

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1 scale and some of those are in the handouts  
2 and that accompany 5A and states like New  
3 York and various state consortia.

4 Ms. Podziba: Are there any  
5 clarifying questions for Kenji?

6 Ms. Pin Ahrens: Sure. All right I  
7 wanted to ask about the last point that you  
8 made Kenji about the native language  
9 assessments not helping as much as possible.  
10 Does the empirical evidence show a small  
11 significant effect or is that it is more  
12 effective for those that received formal  
13 instruction? Is there still a positive  
14 effect by providing to those who have not  
15 received formal instruction in their native  
16 language here in the U.S.?

17 Mr. Hakuta: You would have to resort  
18 to reason and theory on how much access is  
19 possible through English. Most study's that  
20 have looked at, for example side by side  
21 availability of languages, so if you have a

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1 two assessments next to each other to show  
2 that kids will still just stick to one side  
3 and not go back and forth and so forth. I  
4 don't know of any study that is specifically  
5 asked that question and made those  
6 comparisons. Sure you know if there's some  
7 balance to how much proficiency you have in  
8 English to the extent that additional  
9 information would help if the student had  
10 literacy in the native language. Usually  
11 many of the constructs being assessed are  
12 things that we have in math like ratio or  
13 rational numbers are not things unless you  
14 are instructed in that that's not an everyday  
15 language that you use, and therefore for  
16 something like that we can reason that it  
17 really wouldn't help you even if you are  
18 assessed in you your native language.

19 Ms. Pin Ahrens: I know states  
20 provide side by side accommodations where  
21 both the native language is presented at the

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1 same time that the English language is  
2 presented so that student cans choose whether  
3 they want to look at the question in the  
4 native language or they look at the question  
5 in English. Do you have any -- can you talk  
6 about these and whether -- and what the  
7 findings have shown for this sort of  
8 presentation?

9 Mr. Hakuta: It could help but it  
10 could also be a distraction if it's time  
11 limited for example it could be a problem.  
12 Again, I don't know of any specific studies  
13 that have really addressed that and that's  
14 kind of you know have some sort of way in  
15 which you would try out things and see if  
16 they are helpful or not?

17 Ms. Carr: Yes, the national center  
18 of educational progress has conducted such  
19 studies. We have bilingual booklets and we  
20 can determine if the students are actually  
21 using them, and we also have the dictionaries

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1 that they can use and mostly the students  
2 will stick with the English side. They  
3 occasionally look at the Spanish side, maybe  
4 if there's a word they want to translate.  
5 Typically they do not use the English only  
6 side of the booklets.

7 Ms. Pin Ahrens: So are those just in  
8 Spanish in terms of study?

9 Ms. Carr: The booklets we have are  
10 only in Spanish and it's only for  
11 mathematics.

12 Ms. Pin Ahrens: Thank you.

13 Ms. Ricker: Thanks. I have a quick  
14 question about the benefits of newcomers  
15 taking the language in or taking a test in  
16 their home language. I am wondering if there  
17 is a difference or a significant difference  
18 between newcomers with limited or interrupted  
19 formal education versus newcomers who have no  
20 interruption in their formal education?

21 Mr. Hakuta: For students who come

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1 from educational background in which  
2 assessments of the sort formal assessment is  
3 part of what they are accustomed to. It's  
4 just a matter of you know switching the  
5 context is similar and so forth. That will  
6 be kind of appropriate situation. I remember  
7 a case --

8 Ms. Ricker: Is there a significant  
9 difference in benefits.

10 Mr. Hakuta: I was going to contrast  
11 that for students that have interrupted  
12 formal education for whom there is when the  
13 Mung population was settling into California  
14 and California had a very rigid system of  
15 assessing everybody from immediately when he  
16 even pencils were a novel technology for the  
17 educational environment for some of these  
18 students who come from refugee camps,  
19 certainly that with making assessments the  
20 concept of assessment is novel and assessing  
21 the English is just as a kind of almost

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1 absurd situation, so yes it does matter  
2 whether you have familiarity or not with this  
3 assessment.

4 Ms. Ricker: Which newcomers does it  
5 benefit greatest?

6 Mr. Hakuta: Certainly students  
7 coming from educational systems and grade  
8 appropriate grade level, appropriate  
9 education and in their native language. If  
10 they come from the countries in settings  
11 where they already have technology available  
12 or they have formal assessment that will  
13 definitely benefit those students.

14 Ms. Pompa: I'm not sure if it's a  
15 question for Kenji it's a -- on in the back.  
16 I am wondering if someone from the Department  
17 is going to give us a brief overview of an  
18 explanation of what it is.

19 Mr. Rooney: Let me get to the issue  
20 of 5A and we will get to that.

21 Mr. Payment: So I need a couple of

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1 minutes. I want to give a brief orientation  
2 of my understanding of the issues. I serve  
3 on the HHS secretary tribal council. We  
4 wrestled with the historical trauma and the  
5 high rates of suicide and accidental deaths  
6 that are related to those who studies social  
7 science historical trauma. It is really  
8 similar to social anime and the study of your  
9 kind and social anime. High rates of suicide  
10 and accidental deaths, and we are seeing  
11 almost epidemic proportions of accidental  
12 deaths related to drug over dose at this  
13 point also, alcoholism and transients and low  
14 education attainment. We have the worst of  
15 the worst statistics on all scales for  
16 education attainment for American Indians.  
17 Earlier we did our -- and yesterday and today  
18 Leslie did our blessings in Ojibwe. We are  
19 going to do your knowledge and comprehension  
20 and recall of that. How many are comfortable  
21 with that? (laughter) the history of

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1 American Indian participation in education is  
2 real quickly as treaties were signed and the  
3 federal government obligated themselves into  
4 health education and social welfare for the  
5 millions of acres of the land that were  
6 transferred. That is a legal document. Some  
7 people say why honor it. It's old antiquated  
8 document. It's pursuant to the constitution.  
9 Then the federal government identified ways  
10 to basically get out of the responsibility by  
11 under counting and by using a quarter blood,  
12 and we are the only dogs an Indians are the  
13 only populations that have to prove their  
14 percentages where they are and the boarding  
15 school experience was to strip of us our  
16 culture identity and language. The BIE  
17 director right now talked about his  
18 grandmother who in the boarding school who  
19 would speak Navajo would take her in the  
20 bathroom and drag her tongue across the  
21 floor. It's cultural assimilation tragedies.

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1 There's several reports like the Miriam  
2 report, the 1969 Kennedy report, 1974 the  
3 Indian education self-determination act. In  
4 2014 real recently the BIE in education did a  
5 report and what they found was that from  
6 consulting with tribes, so listening to  
7 tribal nations was that the absence of our  
8 culture and languages is the reason why we  
9 have the high rates of everything we have.  
10 That ties right into social anime and  
11 historical trauma. We believe that being  
12 able to provide culture in our school  
13 systems. The 92% go to public schools. The  
14 Department of education in that domain and  
15 how can we effect that so providing language  
16 instruction and culture and immersion schools  
17 where possible is really the solution, and  
18 the responsibility of the federal government  
19 because the federal government created the  
20 situation of historical trauma where cultures  
21 were stripped away and they have the

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1 responsibility to put that back. Leslie is  
2 going to talk more specifically about what's  
3 needed in terms of assessment so I understand  
4 that issue in terms of how do we assess both  
5 the acquisition of our traditional language,  
6 but also how do we assess other content areas  
7 through that lens and earlier or yesterday  
8 the day before I explained that we understand  
9 things and native languages is a very literal  
10 way and a very explanatory way. When we can  
11 teach that and if we could learn to teach  
12 math and science that way and it's called  
13 whole part whole, and they are translating  
14 over to my western civilization knowledge.  
15 People have a content to understand stuff  
16 that's the way they want to learn. I think  
17 Leslie has more to say specifically in terms  
18 of what our needs are in need of native  
19 languages and the content of native  
20 languages.

21 Ms. Harper: I had a few clarifying

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1 questions but I will recede that right now  
2 until we have heard from the others. There  
3 are some items coming up and some  
4 conversations already. I will wait until we  
5 heard from the folks up and then I will ask  
6 my questions.

7 Ms. Podziba: Thank you

8 Ms. Jackson: So I feel like first of  
9 all thank you for being here for sharing  
10 that. I would be curious your thoughts on,  
11 in reaction to what I am about to say I don't  
12 mean to step on what you just said. I want  
13 to clarify that the issue papers 5A and 5B  
14 are related to the federally required  
15 academic assessments and not necessarily all  
16 assessments that children are given in terms  
17 of accountability purposes. I just want to  
18 frame that because the purpose of an  
19 assessment should inform the conditions in  
20 which you that you have given, and so what I  
21 would use to assess a child who's new from a

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1 different state or a different country or  
2 whatever and my classroom maybe different  
3 than I would use to determine sufficiently  
4 instructed them in according to academic  
5 standards.

6           Mr. Hakuta: My remarks were  
7 addressing specifically the -- in the title  
8 one, could say lot more about assessment for  
9 instructional purposes and assessment from  
10 progress and so forth. My comments were  
11 really focused specifically on these sorts of  
12 assessments that are used for the purposes of  
13 the ESEA.

14           Ms. Podziba: What I am trying to do  
15 is get the final clarifying questions for  
16 Kenji then we will ask Patrick to introduce  
17 the issue paper. I understand there will be  
18 clarifying questions for Patrick, so of the  
19 cards that are up, are there questions for  
20 Kenji?

21           Ms. King: I am building on the

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1 framing context phrase just reinforcing  
2 Aaron, what you talked about and the need for  
3 historical context and all of this. English  
4 language was used as an impressive tool to  
5 deny people their Identity and historical  
6 access to English language supports for  
7 immigrant children and the children of  
8 immigrant's was used as a way to -- exclusion  
9 from mainstream schooling. There's  
10 definitely a very explicit amount of children  
11 not being allowed to attend school. When  
12 they were attending school not receiving the  
13 supports they needed to acquire English  
14 language. Thinking about both ways in which  
15 sort of it was used to be an exclusive in  
16 different ways for different communities.  
17 The history of the ways in which language is  
18 used to reinforce suppression and inclusion.

19 Ms. Podziba: I am going to ask  
20 people to ask questions of Kenji. Some  
21 people are expecting that rule and they are

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1 not putting their cards up yet. In order to  
2 give everybody an equal chance to give  
3 comments about the issue I am going to ask  
4 that people have questions of Kenji to ask  
5 them.

6 Is there any demographics about the  
7 instruction in native language whether it's  
8 Spanish or other languages. I am from  
9 Washington State which is a bit of novelty in  
10 terms of the provision of instruction I am  
11 curious if there's any studies or  
12 information?

13 Mr. Hakuta: I could ask Peggy if she  
14 has information on this. I am not aware. I  
15 can't give you a number. There are also  
16 state laws that prohibit instruction in the  
17 native language such as California with  
18 proposition 227 and then several other  
19 states, so there are state-by-state stories  
20 as well? I don't know of any specific number  
21 and partly that's because program labels

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1 don't always correspond to the actual  
2 instruction that's provided so something  
3 that's called by may not necessarily be  
4 bilingual. It's just because of the shortage  
5 of teachers that speak with native languages.

6 Mr. Rooney: Are you asking data  
7 state level demographic data for bilingual  
8 education programs? Is that the question?

9 Ms. George: I am not sure I am  
10 trying to figure out a sense of the  
11 availability of instruction in native  
12 languages whether that's bilingual or  
13 otherwise.

14 Mr. Hakuta: There's some you know  
15 data sets monitoring of not by federal  
16 government, but of for example dual language  
17 or bilingual like two way immersion programs  
18 that know instructions that provided in the  
19 native language that has an exclusive goal of  
20 the program. It's far more difficult to tell  
21 if a program is called bilingual whether in a

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1 transitional program, but a percentage or how  
2 much native language is being used.

3           Mr. Rooney: I know our English  
4 acquisition program had some data. I can't  
5 speak to that it's something we can look into  
6 data to see if there's a bilingual education  
7 program. I don't know if there's a great  
8 data source across the country. For the most  
9 part that's not a state level decision. I  
10 think it's a local decision. I don't think  
11 there's state data or information by state by  
12 bilingual education programs happening in  
13 states it's not necessarily state data. I  
14 think it's more of a local decision.

15           Ms. Pin Ahrens: I do have a question  
16 for Kenji. I wanted to remark that I  
17 appreciate Aaron's comment. My first  
18 experience with the American education system  
19 was being forced to stand in the corner and I  
20 would be denied lunch when I did not speak  
21 English. This is what I think what frames my

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1 perspective I am going to ask Kenji. What  
2 does the research say about the average time  
3 for acquisition of English oral language  
4 proficiency versus academic English  
5 proficiency and what is the implication for  
6 validity in reliability if you are giving  
7 somebody who is not proficient in academic  
8 English proficiency a test in English without  
9 those linguistic accommodations?

10 Mr. Hakuta: Thank you. That's an  
11 excellent question. If I were to put a  
12 number and let's say you say you put a  
13 criteria like on a English language  
14 proficiency measured orally, so this is the  
15 listening and speaking skills on state an  
16 English language proficiency assessments and  
17 ask how long does it take for students to on  
18 average to attain proficiency for let's say  
19 75% of the students? I would put that number  
20 and that's somewhere between two to three  
21 years. And if for let's say academic aspects

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1 of language such as literacy, reading and  
2 writing years that's 7-8 years is how long it  
3 will take. That's under the condition that  
4 is really dependent on things like the level  
5 of development in the native language that  
6 students have that are coming in so including  
7 pre-literacy sorts of skills. It would  
8 depend on the level of English that they  
9 already had when they come into the system,  
10 so it really matters whether you are at  
11 basically zero English versus some  
12 intermediate state of English. If you have  
13 siblings who brought some English back into  
14 your home that will accelerate the language  
15 proficiency development, and then there's  
16 also understanding that we have of the  
17 relationship between English language  
18 proficiency and performance on academic  
19 assessment. Essentially at the lower levels  
20 of English language proficiency performance  
21 on an academic assessment in English language

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1 arts or math or science is essentially a  
2 measure of your English language  
3 proficiencies so you can show correlations  
4 that are quite high between either English  
5 language proficiency and the performance of  
6 the academic assessments. It's really in  
7 that sense those academic assessments aren't  
8 the measure of the academics, but rather of  
9 how much your understanding instructions and  
10 the prompts in the assessment. At a certain  
11 point that relationship goes away with  
12 suggesting it really is being more of an  
13 assessment of academics. We also know  
14 through the older assessments these are  
15 different standards because the standards are  
16 changed, but there are differences between  
17 English language art and math, so in the old  
18 standards students that relationship between  
19 English language proficiency and performance  
20 in math went away sooner than it does in  
21 English language arts which isn't surprising.

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1 It has a lot more language demands. That's  
2 likely to change now that math has a lot more  
3 language demands around explaining the  
4 reasoning and so forth. At least in the old  
5 assessments we know that there are  
6 disciplines specific differences depending on  
7 the language demand of the content that we  
8 need to pay attention too. So basically  
9 three to eight years or something like that  
10 would be that range for I hope that is a  
11 satisfactory answer.

12 Ms. Podziba: Let's take the four  
13 last questions for Kenji then I will ask  
14 Patrick to introduce the paper issue.

15 Mr. Chau: We serve the most English  
16 learners than any other district in the  
17 country. I have been remarking about some of  
18 the experiences that we have in posting a  
19 question to Kenji and to share with the group  
20 a little bit about some of our experience  
21 around long- term English learners, and how

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1 we define that and the impact on assessments  
2 around that. My other follow up questions  
3 was in terms of length of time that student's  
4 takes to learn English. I would love to hear  
5 your comments about kind of the description  
6 of English long term English learners and how  
7 that effect as performance in school as well  
8 as you started touching on this at the end of  
9 your last remarks around how some of the new  
10 assessments particularly our newly designed  
11 computer adapted assessments that are a lot  
12 more language or effected especially based on  
13 some of the language in this regulation that  
14 talks about proficiency in the language and  
15 then proficiency in the content area, so I  
16 would love to hear your thoughts on that.

17 Mr. Hakuta: On the long term English  
18 learner it's a space in which there's been a  
19 lot of attention in the last I would say five  
20 or six years if not a little bit more. And  
21 it's hard to say often long term English

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1 learners is really more of an outcome of not  
2 successfully serving students. These are  
3 students who have been identified and  
4 continue to be identified and not be  
5 classified into proficiency in English and  
6 some states follow re-designation or  
7 reclassification for some substantial period  
8 of time and depending on the state, some  
9 state laws have started to define this. It's  
10 usually between five to six years, so if  
11 essentially if you are middle school and you  
12 have not been reclassified in the system from  
13 somewhere in the early elementary grades then  
14 you are considered a long-term English  
15 learner. ESSA as I understand it within  
16 title three has some reporting requirements  
17 related to students who have been in the EL  
18 category for some time. It's a substantial  
19 number, and if you go to most middle school  
20 or high schools and look at the population of  
21 student who are identified as English

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1 learners most of those students will be in  
2 that category so newcomers take up I don't  
3 know what? There is no national average on  
4 this or the national average would be  
5 meaningless because the criteria vary from  
6 state to state and in some cases across  
7 districts within a state such as the state of  
8 California. Somewhere in short of ten  
9 percent is in newcomers in the later grades.  
10 The rest have been kids in the system and not  
11 been reclassified. It's hard to say which is  
12 cause and effect. We know that these  
13 students need to be served. There's a much  
14 higher rate of students who are classified or  
15 also identified as disability intra group by  
16 a factor or magnitude of three to four times  
17 as likely in the younger populations, and so  
18 it's clearly a student grouped with  
19 significant need. Most of these students  
20 basically have not met the criteria for  
21 reclassification. They may be quite fluent,

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1 in fact, maybe stronger in their language  
2 skills in English than they are in their  
3 native language. They are stuck somewhere in  
4 the higher levels, middle to higher levels of  
5 English language proficiency that are still  
6 and may even have tamed proficiency in that  
7 but have not met the other criteria that  
8 districts or states may require including  
9 often some kind of proficiency level in the  
10 academic assessment. That's the long-term  
11 English category. That's an important point  
12 to make because we need some sort of  
13 differentiated understanding of an English  
14 learner who's in K-3 let's say versus in the  
15 6-8 or even in high school so that's the  
16 point I wanted to make about that. In  
17 response to your question about the computer  
18 adapted or I'm sorry --

19 Mr. Rooney: The second part of your  
20 question is about particular tests that have  
21 been administered at. I would like us not to

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1 address that. I think any particular  
2 assessment I don't want to get into the weeds  
3 of a state of a particular test of a  
4 particular state is using. I think generally  
5 talking about we want to have guidelines as  
6 good assessments criteria for all states. I  
7 don't want to get into any particular test  
8 that's why we have a peer review process. We  
9 will evaluate documentation about how the  
10 test was developed and administered to  
11 evaluate the quality of assessment.  
12 Particularly as regulations are helping to  
13 figure out what are the perimeters that are  
14 established to make sure it's a good test.

15 Mr. Hakuta: I was going to make up  
16 an answer anyway.

17 Ms. Harper: The conversation here is  
18 being highly dominated of context of  
19 immigrant students there's several  
20 definitions of EL student's that we review  
21 and as we take the experts comments and

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1 there's several categories of EL students  
2 that carry over in the ESSA. The other  
3 question for Kenji is you were talking in an  
4 earlier response about the cognitive academic  
5 language proficiencies and the amount of time  
6 required to obtain that, and so then I was  
7 going to ask you as well while we are talking  
8 about obtaining cognitive academic language  
9 proficiency tell us about language transfer,  
10 how that transfers over per content matter?  
11 Can you talk about that a little bit, the  
12 idea of common underlying proficiency idea  
13 and that kind of stuff? I am setting a  
14 context for content area academic assessments  
15 and our EL students.

16 Mr. Hakuta: Yeah you know the idea  
17 is that language is much more than asking for  
18 directions to the bathroom basically or  
19 social language. In that there is quite a  
20 bit of research showing the transfer you  
21 suggest which is really why students are

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1 instructed exclusively in one language once  
2 they develop academic proficiency could  
3 transfer much of that into the other  
4 language. It's also why students, immigrant  
5 students who come with strong formal  
6 education and their native language also  
7 developed English graphically as well as  
8 academic proficiencies. I think that's quite  
9 well established that there are relationships  
10 between them. The relationship between  
11 language and academics is also really defined  
12 or broadened into vivid focus with the  
13 college career readiness of standards and  
14 academic. Language plays an important role  
15 in the way they are identified. I would say  
16 that area of language and how languages are  
17 used, for example, argument for explanation  
18 and so forth. Those are things that transfer  
19 very much across languages that will fit  
20 within what you are describing as talc. Very  
21 few people use that term any more. It does

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1 refer to those kinds of academic uses  
2 disciplines and specific uses of languages.

3 Ms. Jackson: Hi, Kenji. You  
4 mentioned for academic proficiency about 7 to  
5 8 years. I am wondering if that is the  
6 average for learning a second language or if  
7 that would also be appropriate for our all of  
8 our regular students who when they are in  
9 third grade are about eight years old?

10 Sorry, so I am not trying to be like got you  
11 on this or anything. So you mentioned about  
12 7-8 years to develop academic language  
13 proficiency there's different terms for that.  
14 I am wondering if that's the average time for  
15 students acquiring a second language or would  
16 it apply for our general students as they are  
17 growing up and given that third graders are  
18 about eight years old in their first round of  
19 testing?

20 Mr. Hakuta: I think you are  
21 referring to the fact that kind of academic

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1 literacy is something that is true for all  
2 students that you know, so if it just takes  
3 you know the language used and required by  
4 the disciplinary practices that are contained  
5 in that are in math classes or sciences and  
6 English language arts working with complex  
7 text and so forth is kind of a it's a use of  
8 language which is novel for many students not  
9 just English language learners, and I think  
10 that those are the things that take time. It  
11 is shared so that you know assessments that  
12 are used let's say that let's look at  
13 academic language or however you define it if  
14 you administered it to English only kids a  
15 lot of English only kids would also struggle  
16 as well. I think that's the point you are  
17 trying to make and in a sense we are talking  
18 about a situation of, you know, English  
19 learners are a bit like the canary in the  
20 minds that the struggles that they have with  
21 language really show up and are really

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1 presented to us in our face, but this is  
2 something that all students really struggle  
3 is it's just that English learners have that  
4 additional thing of being in a new culture or  
5 new setting and so forth. I think that or at  
6 least that's what you are trying to refer to?

7 Ms. Jackson: Thank you.

8 Ms. Podziba: I am going to turn to  
9 you and ask you to introduce the issue paper  
10 for 5A.

11 Mr. Rooney: Great thanks. I  
12 definitely appreciate Kenji's introduction.  
13 This is going to be a very rich conversation.  
14 I am looking forward to it. I did want to  
15 provide a little bit of context for the issue  
16 paper and walk you through briefly the  
17 additional data that we provided in  
18 everyone's binders to give you that context.  
19 I think the issue paper is focused on  
20 specifically around native language  
21 translation assessments. I did want to step

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1 back a second and say that this is within the  
2 context of how this state is making sure it's  
3 assessments are valid, reliable and  
4 accessible for all students including English  
5 learners. Similar to yesterday when we  
6 talked about students with disabilities.  
7 There's a similar requirement in the ESSA  
8 it's not in the NCLB which is not new that  
9 states need to make sure they are including  
10 all students including English learners to  
11 make sure the test is valid and reliable and  
12 accessible for English learners. The states  
13 long history and they have been adding and  
14 approving accommodations over the past 15  
15 years as they continue to enhance their  
16 assessments. The challenge is for many  
17 students particularly newcomers and we are  
18 talking about all English learners as Kenji  
19 is pointed out there's a lot of recently  
20 newcomer English learners, and native  
21 language translation maybe needed for the

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1 students to demonstrate what they know and  
2 can do so that way you have a valid and  
3 reliable result of how that student is and  
4 what knowledge they know and how to provide  
5 resources for that. If you look at the top  
6 paragraph the last sentence tries to include  
7 the language. The language from NCLB to ESSA  
8 has not changed significantly, but there is  
9 an important distinction that got added to  
10 the statute this time that we want to spend  
11 time on this morning which is that you look  
12 at the sentence in 111 (B) (2) (F) so sorry for  
13 getting into the weeds of the statute of the  
14 law. It requires that each state identify in  
15 its state plan, languages other than English  
16 present to a "significant extent" that clause  
17 in quotation marks new, and it's  
18 participating student population and indicate  
19 the languages for assessment are not  
20 available and are needed. The state must  
21 make every effort and they request assistance

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1 from the secretary. That is what the statute  
2 requires. It's a small component's. We want  
3 to spend some time talking about what that  
4 might mean. Looking historically in the  
5 bottom paragraph here and then some of the  
6 paper we provided in the background provide  
7 information about how states are generally  
8 trying to address this in the past. Many  
9 states have added native language  
10 translations of their assess MS translating  
11 the whole assessment or directions or parts  
12 of their assessment. If you look at the  
13 first attachment after the issue paper it  
14 gives a list by state of the number of  
15 English learners in the state and then what  
16 native language assessments are offered.  
17 There is a third column which I will explain  
18 why that's there whether the state is a  
19 member of currently member of an assessment  
20 consortium and to remind everyone there's two  
21 groups of states that formed to develop new

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1 reading language arts and assessments back in  
2 2010 those assessments were given in 2014-15  
3 and as part of the development the states  
4 that came together to develop those two  
5 different assessment systems both created  
6 native language translations of their  
7 assessments part provided the options for its  
8 members states to have a Spanish language  
9 math test, and smarter balanced also provided  
10 a Spanish language version of its test which  
11 actually it's a stacked translation both the  
12 English and Spanish are both side by side,  
13 and they translated the test into the ten  
14 most popular language among states that are  
15 in smarter balanced. They provided  
16 some -- we wanted to add the column the last  
17 year we have data for it is in 2013-14 and  
18 the stated that switched to smarter balance  
19 in 2014 have different options for their  
20 students than they did in 13-14. We wanted  
21 to provide that context for you. The second

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1 chart which is a little bit more confusing I  
2 am going to spend a minute to walk through it  
3 so you can understand it gets to the question  
4 about what does significant extent mean. We  
5 wanted to provide data to help inform the  
6 conversation. We looked at from the most  
7 recent data we had available. We looked at  
8 the percentage of students who are English  
9 learners and at different thresholds of  
10 populations within the state how many  
11 languages would fall into that category? So  
12 hopefully that makes sense. If you look at  
13 Alabama if you were to say a significant  
14 extent means five percent of the population  
15 and five percent of the English learners and  
16 that would be the only language spoken by  
17 five percent of the population. If you look  
18 at Alaska that fits into five languages  
19 Yupik, Spanish, Tagalog, Inupiaq and Hmong.  
20 As you go towards the right in each state as  
21 the threshold gets higher you can see how

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1 many languages are still incumbent in that  
2 definition the Alaska one is helpful as a  
3 reference if you go to the ten percent column  
4 only two languages Yupik and Spanish falls  
5 into that category. To a significant extent  
6 and ten percent of the English learner  
7 population that would be Yupik and Spanish  
8 would be languages covered in Alaska. This  
9 tries to provide some context for you to  
10 understand how popular or how a populous or  
11 common different languages are being spoken  
12 by the English learners in each state. Are  
13 there any questions on the data?

14 Ms. Podziba: Is your question on  
15 data?

16 Ms. Jackson: For the numbers or the  
17 criteria in terms of threshold is that for  
18 K-12 age children or like the whole state  
19 population?

20 Mr. Rooney: K-12 population? Good  
21 question. Thank you. Back to the task

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1 that's correct for the SS test?

2 I think this was to Audrey's point  
3 earlier this is where we are focused today  
4 and states are required to give in order to  
5 meet the federal requirement to test once in  
6 each of grades through three and once in high  
7 school in reading arts and mathematics once  
8 in elementary and middle and high school  
9 essentially and they actually 3-35 and  
10 essentially it's science and elementary and  
11 middle and high school. We are talking about  
12 the assessments for reading language arts and  
13 math and science to meet the requirements in  
14 the federal law. Thank you

15 Ms. Evangelista: If that's the case  
16 I want to clarify one thing for New York. It  
17 says that the science was offered in three  
18 languages, but it actually and the math is  
19 offered in the five but actually the science  
20 unless something has changed? It has always  
21 been offered in all five.

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1           Mr. Rooney: Thank you for that  
2 information. Sometimes we are not one  
3 hundred percent in our data. The issue paper  
4 and now that we have provided the context the  
5 law says that so there's the two clauses that  
6 were quoted in the issue paper that I  
7 mentioned. The first was to a significant  
8 extent the second extent to make every effort  
9 that the state must make every effort to  
10 develop assessments. NCLB it's not a new  
11 clause added to the law and in the past the  
12 Department did not write any regulations or  
13 guidance on what that means. I think the  
14 question that we want to have for this group  
15 is whether it's helpful for us to provide  
16 some further information or clarification  
17 around what it means to make every effort to  
18 provide native language translation of tests.  
19 I think in just as a last point before we  
20 start the discussion, and the questions that  
21 we have we know that states context for this

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1 and some states have English only laws which  
2 means they don't have the legal authority to  
3 arrive in the native language of the  
4 assessments, and if you discuss if it's  
5 helpful about how that state law interacts  
6 with this piece that's in the federal law  
7 that just got passed. We want to make sure  
8 that's a challenge in some states and think  
9 what that might mean in the statute and  
10 regulations we are thinking about. I would  
11 like to open it up to discussion questions if  
12 that's okay. The first question is that  
13 statutes specify that a state must make every  
14 effort to develop assessments after languages  
15 other than English that's significant to  
16 every student population in the state.  
17 There's two questions to this what must the  
18 state do to demonstrate its effort to make  
19 every effort. Related to what constitute as  
20 language to a significant extent. We will  
21 start with the make every effort question

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1 first.

2 Ms. Jackson: So what you just  
3 referred to about the legal or the dynamic  
4 between federal and state was exactly my  
5 question. I know you said you could explain  
6 it if you would like to do it later. I know  
7 Massachusetts does have an English only law  
8 and that chapter 71A I think that's moving up  
9 through the levels to try to change that. I  
10 was curious about that dynamic.

11 Mr. Rooney: Clarification is  
12 helpful. I am happy to turn it over to Kay.

13 Ms. Rigling: I think the critical  
14 words here are make every effort. I think  
15 the normal rule is that in order to receive  
16 federal funds is if there is a requirement  
17 that applies to the received of those funds  
18 then the federal law would govern, and if  
19 there is a conflict with state law, state law  
20 would have to change. The facts here that  
21 says make every effort I think is a qualifier

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1 and that language would be read in the  
2 context probably of the English only state  
3 laws.

4 Ms. Pompa: Thank you. I hope you  
5 will indulge me all of you because this is a  
6 particular passion of mine and it's an  
7 opportunity to talk about English learners in  
8 the way that ESSA brings in terms of my  
9 forefront that is by including the English  
10 proficiency in the overall state of  
11 accountability. That's why this is important  
12 to all of us. That change has lots of  
13 implications for assessment. We are not here  
14 to regulate accountability. I think many of  
15 the assessment issues we make will impact the  
16 accountability assessments we make will be  
17 important, the languages that they need  
18 assessments in to ask for help has been in  
19 place since 1994. I became director of the  
20 office of bilingual education and the federal  
21 government in 1995. In that year we sent out

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1 a request for states to tell us if they  
2 needed help. Nobody responded. Looking at  
3 this 25 years later I think it's time we take  
4 this head on. The comments I am about to  
5 make really I am trying to keep in the  
6 context of the assessments that are required  
7 of ESSA. I think it's important that all of  
8 us think about it that way. I too was in a  
9 school that was prohibited for speaking  
10 Spanish. I am too many in our generation  
11 lost our native language because we were not  
12 instructed in their native language. I think  
13 it's extremely important for all children to  
14 learn languages and particularly for English  
15 learners not to lose their language. I think  
16 there's remedies elsewhere in the law. I do  
17 want to remind us that right now we are  
18 talking about the adjustments to or the  
19 accommodations of the native language to the  
20 assessments that are specified in the  
21 legislation. Given that what I would

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1 recommend is that we ask the states for the  
2 first time after 25 years to give us much  
3 more detail about the languages in their  
4 states and that be part of the regulation.  
5 And that's a complex thing because it's not  
6 only the number of languages that are present  
7 it really is very closely tied to the  
8 instruction that is provided in that  
9 language. As I said I am a firm believer  
10 that instruction should be provided in the  
11 native language, but that's a fight that  
12 takes place elsewhere and it's another part  
13 of the legislation, so I do think it's  
14 important to look at whether instruction is  
15 offered in those languages, but I think that  
16 there are other elements that we should look  
17 at and the state should look at as part of  
18 the larger network about decision of how  
19 native language assessments are offered for  
20 this. One is the distribution across the  
21 grade levels of those speakers. We do not

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1 test kids or are not required to test kids in  
2 K-2 that is where the preponderance of  
3 English learners are. That does not negate  
4 the fact that there's many states that have  
5 English learners at the grades we do test.  
6 It's important to look at that. It's  
7 important to look at the use of the  
8 assessment so the fact that you don't have  
9 native language assessments for this  
10 particular use should not preclude native  
11 language for diagnostic purposes to go hand  
12 in hand with the English testing and a lot of  
13 states do that to give you more information  
14 about what students know not what they don't  
15 know. Again, that's not part of this. I  
16 also think we need to look at the plans of  
17 that state. As Kenji pointed out there's how  
18 many states now that have the seal of bi-  
19 literacy, 18 states would have a seal of bi-  
20 literacy. I would think those states would  
21 want to begin assessing in the native

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1 language if that's part of their long-term  
2 plan. That's up to the state to provide.  
3 They should be required to talk about their  
4 long-term plan in reporting their need for  
5 assessments in the native language. So  
6 taking all of these factors into account the  
7 regulation should really be about how states  
8 report what languages they need in the  
9 context of what their language context is and  
10 what the needs of their learners are. They  
11 should be required to report on all of these  
12 categories and not report the data to the  
13 Department and say here you decide what to do  
14 with it. Here is what we want to do with it,  
15 and here's why we made the decisions that we  
16 made and you have context for the federal  
17 government for making their judgements about  
18 where languages are needed. Finally, I think  
19 it's important that we beyond tightening up  
20 reporting and I don't know the practicality,  
21 not the practicalities or the operations on

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1 how this works. I believe in regulation.  
2 You could call for further study perhaps of a  
3 commission or someone to look at the use of  
4 native language and to look at this law and  
5 the requirement from a more research based  
6 perspective and also to do a better job of  
7 taking a wider view of the entire country and  
8 where we are going and what states are doing  
9 and what the latest developments are and that  
10 sort of thing. I think it would be a very  
11 useful thing and perhaps that could be part  
12 of guidance, and I would prefer it to be part  
13 of the regulation. We tighten up what's  
14 reported from the states and provide the  
15 categories including grade span and what the  
16 instruction are, and what the plans are of  
17 the state in the native language. And what  
18 their justification for why they do or don't  
19 use the native language and further that  
20 there be some sort of body established by the  
21 federal government to be begin to look at the

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1 use of native language assessments and  
2 looking at the research and practice.

3 Ms. Harper: I think Aaron gave a  
4 really good description of the status of  
5 native American's in this country, really  
6 quick very concise overview of what has  
7 brought us to where we are today as the  
8 sovereign nations of this country. The very  
9 complex constituencies and monitor agencies  
10 that we negotiate as tribal members as Native  
11 American members of this country. So again I  
12 am going to go back and ask that to frame up  
13 this discussion on English learners we  
14 describe all the categories and that we  
15 consider all the categories of EL's that are  
16 in the law as we go through this and reflect  
17 on what the secretary said yesterday,  
18 yesterday I can't even tell what day it is,  
19 two days ago. You know that at the heart of  
20 it this is a civil rights law that we are  
21 talking about and we are looking for equity

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1 and civil rights in this. Section  
2 8-- definitions of English learners carried  
3 through here says the term English learner  
4 would use with respect to an individual  
5 meanings, A, someone age 3-21 B, who is  
6 enrolled or preparing to enroll in an  
7 elementary school or secondary school, C, one  
8 who is not born in the United States or who's  
9 native language is a language other than  
10 English, who is a native American or a Alaska  
11 native or a native resident of the outlying  
12 areas and who comes from an environment from  
13 a language other than English, has had an  
14 impact on the individuals language  
15 proficiency or three who is migratory who's  
16 native language is a language other than  
17 English, and who comes from an environment  
18 where a language other than English is  
19 dominant. You know I mean we have to talk  
20 about what these are and we have to  
21 understand that there are several categories

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1 of EL's that we are talking about here. So  
2 that's going to frame up, you know, the  
3 beginning of our discussion here, and I hope  
4 that we are able to move forward and talk  
5 about this. We have distinctive definitions  
6 of EL's in here for our Native American  
7 student's and for our native Hawaiian student  
8 and for our Alaska natives, and we must  
9 consider that in the context of education in  
10 many of our sites

11 Mr. Hager: Thank you for that  
12 Leslie. I am going to go back on the  
13 comments. I appreciate your comments though  
14 the first one is the legal question, and I do  
15 understand how we make every effort there's a  
16 qualifier there. However, if you look at the  
17 actual law in a state you know what's the  
18 difference between assessing languages other  
19 than English and instructing in other, in a  
20 language other than English so that when you  
21 are determining, you know, is there a

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1 conflict or is there not the formal rule is  
2 the federal law supersedes and you are taking  
3 this money, lots of money so you need to  
4 comply with the law so that there should be a  
5 strict construct? I guess, strict  
6 construction approach to there or is there  
7 not a conflict? I think with some laws it  
8 may be written in such a way that you are  
9 stuck and there is in fact a conflict and  
10 make every effort if it's against the law,  
11 it's against the law. In other states there  
12 might be room to the law. Your rule only  
13 applies to this not that. In terms of  
14 looking at how states define and I think it's  
15 an important distinction to make reporting  
16 not only reporting for English learners, but  
17 also English learners with disabilities.  
18 There's really a death of information only  
19 four states reported participation and EL's  
20 with disabilities on general assessments only  
21 18 on EL's with disabilities for the

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1 alternate assessment and alternate academic  
2 standards. In terms of the data requirement  
3 definitely make sure we include the English  
4 learners with disabilities.

5 Ms. Rigling: I want to respond to  
6 Mr. Hager's comments. We are not in any way  
7 interpreting state law here. I just wanted  
8 to point out that the federal law does not  
9 demand native languages. It certainly  
10 strongly encourages that, but it does not  
11 require that there be a native language  
12 assessment. I think to the extent that we  
13 just need to keep in mind that there is in  
14 this area in particular a lot of new answers  
15 in terms of what the federal law requires and  
16 what the conflicts there might be with state  
17 laws, but I don't want in any way to chill  
18 any discussion because I think it's very  
19 clear that the law is encouraging native  
20 language assessing these students in the  
21 valid and reliable manner and that is in the

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1 law. What we have to do is figure out how we  
2 can do that in some context. It might be  
3 native language context. It might be  
4 appropriate accommodations that are currently  
5 being required. That's sort of what we need  
6 to do here today.

7 Ms. Ricker: Thank you. I have a  
8 question and then an offer for an answer to  
9 the question or to the question you posed.  
10 My first question is how many states  
11 requested assistance to develop native  
12 language assessments up to this point and  
13 then what generally what are the outcomes of  
14 some of those assistance or that assistance?

15 Mr. Rooney: I can try to answer  
16 that. I will have to check on the first  
17 part. I don't know that any states requested  
18 assistance from the Department on providing  
19 native language translation assessments. I  
20 will say that related to this the Department  
21 provides funding to all states as formula

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1 funds that go to states every year and in  
2 order to help them develop and administer  
3 their assessments so there is finance  
4 provided for the development of their  
5 assessments. I don't know if we provide any  
6 technical assistance native translations of  
7 assessments.

8           Ms. Ricker: A follow up question  
9 thinking in particularly in states that maybe  
10 hostile to world languages. Is it permissive  
11 for a district to go around a state to ask  
12 for assistance?

13           In our laws to have a state  
14 assessment system, and so I mean the question  
15 would be with the district be going around  
16 this for assistance in administering or  
17 implementing the state assessment or would it  
18 be asking for assistance with respect to some  
19 sort of local assessment requirement?

20           Ms. Ricker: They would be asking for  
21 assistance at the local level?

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1           Again, I think the requirement is on  
2 a state assessment system.

3           Ms. Ricker: That's helpful. I would  
4 add to Leslie's point I actually thought her  
5 comments were very germane to the question  
6 you have. What do the states do to meet the  
7 requirement to meet every effort? I would  
8 want to put a fine point in adding to that in  
9 saying that I would expect the state that  
10 would have to separate out it's demonstration  
11 of every effort into include all exclusively  
12 to address all the categories and to make  
13 sure there's specific addressing of every  
14 effort to an indigenous language and every  
15 effort of native languages in that state. I  
16 would further answer that question by asking  
17 the state. This is a different approach to  
18 the same question of making every effort and  
19 that is asking a state to address any  
20 hardships or barriers. The state believes it  
21 has and I believe that different way of

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1 gathering useful information for the  
2 secretary as he or she offers assistance to  
3 states who hopefully start asking for it.  
4 Thank you.

5           Mr. Chau: I just wanted to piggy  
6 back off of what mentioned before about  
7 having guidance for state plans on what data  
8 to report. I would encourage us to maybe not  
9 necessarily over regulate what has to go in  
10 those plans because our states are very  
11 different as well. I wouldn't want any of  
12 the expected reporting requirements to  
13 unnecessarily impact districts within a state  
14 as well. For example, LA unified alone has  
15 more English learners than all but four  
16 states on this list. Let me say that that's  
17 pretty significant. We have more English  
18 learners in our district alone than all but  
19 four states on this chart. That being said  
20 you know to expect the state of California to  
21 respond in a very kind of restrictive way in

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1 any sort of plan might not actually meet the  
2 needs of all the local districts either. I  
3 encourage us to think through that mainly  
4 because we know immigrant community,  
5 immigrants may also be concentrated in  
6 specific communities and neighborhoods and so  
7 for example when you look at the list of  
8 reassessments for California there are two  
9 specific languages that are not present there  
10 that would be impacted here in the Los  
11 Angeles city specifically Korean and Armenian  
12 which are significant populations in our  
13 community. Many of us come to our country  
14 and are educated so it might make sense for  
15 those newcomers to be assessed in their  
16 native language. We also have very, we have  
17 other immigrants who come to our city and  
18 come with very little formal education from a  
19 native group in central and South America  
20 speaking languages like Quechua and others  
21 and where assessments might not make a lot of

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1 sense. I just want to put that out there and  
2 say that I appreciate the need for states to  
3 provide data on the immigrant populations,  
4 but also to allow states the flexibility to  
5 report out on specific districts in their  
6 states as well and leave flexibility. I know  
7 that looking at some of these other states  
8 like Michigan and others where I am aware  
9 there's immigrant communities that are  
10 concentrated in specific areas that we need  
11 that flexibility in the plans for states to  
12 provide justification where they might offer  
13 some assessments in the native language and  
14 not in others.

15 Ms. Evangelista: A couple of things.  
16 I think we are talking about two slightly  
17 different things. We are talking about  
18 native language assessments and native  
19 language translation's which tend to be very  
20 different for students and translate. Coming  
21 from New York where I think they have been

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1 quite at the forefront for a lot of this work  
2 we do provide translations for students.  
3 They are not always one hundred percent  
4 correct or accurate but I have seen at our  
5 school a lot of schools like ours that serve  
6 newcomers and many of them interrupted  
7 education, unaccompanied minors that the  
8 translations have been tremendously  
9 beneficial for our students. It doesn't mean  
10 that the students have to take it in their  
11 native language. Students and parents are  
12 given that choice. I think as Kenji eluded  
13 to it's there, there's when you are talking  
14 about three to eight years when you are  
15 coming in already, already literate in your  
16 language to develop language. It's not  
17 something that's the same for every student,  
18 and we have seen student who is develop  
19 language very quickly who it takes longer  
20 depending on lots of things. Are they here  
21 at home and working and so many other factors

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1 that are factored in for students? Those,  
2 the option to have that side-by-side  
3 translation for students for some of them  
4 it's wonderful because remember that any test  
5 that we are looking at is an English reading  
6 comprehension test first. If you are looking  
7 at a science test or math test you need to  
8 understand what the question is? Asking  
9 it's -- a lot of us haven't taken a science  
10 test probably since high school. I can sit  
11 down and take the high school right now and  
12 do okay on it because I know how to look at a  
13 question and figure out what it's asking me  
14 and that accommodation for student's is at  
15 least helping them with the directions and to  
16 figure out what the question is asking.  
17 Again, for students who aren't fully literate  
18 in their language it's not always helpful,  
19 but the choice should be there's and their  
20 families whether to have that accommodation  
21 or not. To have not it there I think the

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1 test is invalid. You are not saying what the  
2 student knows. The last thing is this idea  
3 of significant extent it was really helpful  
4 for me to see this information because we are  
5 given the languages and we are given the test  
6 in five languages to provide for students.  
7 When I looked at the data here I could see  
8 two of our major languages which are Arabic  
9 and Bengali we don't have for students. That  
10 has been a consistent issue in our schools  
11 that I am handing out you know the Spanish  
12 and the mandarin translations, and the very  
13 few Korean students or the very few Russian  
14 students that I might have. I have huge  
15 populations of Arabic and Bengali students  
16 that don't have that side by side translation  
17 and to be able to look at that data and say  
18 that look whatever we say is the top  
19 languages in your state should be at least  
20 represented or we do have the option for  
21 students can respond in their native

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1 language, and someone will grade it for them  
2 if that's a choice. That's different than  
3 having the questions there or the option to  
4 understand what the question is asking in the  
5 native language.

6 Mr. Payment: Okay I have a couple of  
7 points I want to make. First of all I  
8 appreciate you hitting the issue of validity  
9 because we had a primer on our first day on  
10 research and statistics and validity  
11 reliability and fairness. So if we aren't  
12 applying those standards we are expecting  
13 students to demonstrate their performance  
14 through an invalid tool. I think that's key  
15 and I think that's very key and we always  
16 have to come back to that. If you have a  
17 bias that doesn't understand that then you  
18 need to recognize that. So I also would do  
19 my ancestors in the future generations, I  
20 would be remiss if I didn't, so one of the  
21 sayings that we hear all the time that we

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1 just American Indians find just so such a  
2 conundrum is you are an America now boy,  
3 speak English. It's like well, okay we get  
4 left out of argument quite a bit, but the  
5 issue is it's same as the immigrants. The  
6 expectation that we have to conform to a  
7 certain style or in order to fully  
8 participate American's. We were here before  
9 English was here so that expectation is  
10 unrealistic. The conundrum of us being here  
11 first and being subjected to all of the  
12 processes to strip us of our culture and  
13 language and our accessibility based on  
14 adaptations of that is an interesting thing.  
15 I will take that hat off for a second and I  
16 will put the accountability hat on. I am  
17 looking at this list of those states that  
18 have assessments offered in native language.  
19 It was a language that we read through the  
20 law and where Leslie read through where the  
21 native language Native American language. We

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1 use it so frequently now because it's in the  
2 law: We forget the Native American portion  
3 in the native language is left out. If you  
4 look on this list this list suggests that  
5 when you asked for in 1991 is something  
6 that's critically needed today. So I think  
7 if we are going to do a service to our  
8 population moving forward we need to get  
9 that. That's very different. I know state  
10 sovereignty and all of that it's very  
11 different than mandating something. I think  
12 we need a score card or baseline that can  
13 suggest what we are actually doing now and  
14 that might lead to best practices. Who knows  
15 states will see that other states are doing  
16 it and it's not so painful or horrible or  
17 un-American maybe we can do it. I do think  
18 that if it's in the guidance or regulations  
19 then I prefer the regulations which is to  
20 compel the data collection of states that do  
21 accommodations and assessments and in their

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1 native languages. I think there was one last  
2 point. So all right, so understanding state  
3 sovereignty because the provision for  
4 sovereignty for states is the same as it is  
5 for American Indian tribes. In subparagraph  
6 three sovereignty for states and foreign  
7 nations and Indian tribes our sovereignty  
8 comes from the same origin. Maybe there is a  
9 provision for us to assert ourselves as a  
10 tribal nation. The federal government is our  
11 trustee they may have to take a backseat -- I  
12 think that maybe we have been a little too  
13 lax in saying that this is what we like for  
14 you to do whether you take the funds or  
15 whether you do it or not is up to you. I  
16 think maybe you shouldn't get those funds. I  
17 also pay taxes if you are not following law  
18 you should not get those tax dollars right?  
19 Maybe if we took an assertive role there  
20 maybe states would come along. I think  
21 states are more likely to come along if we

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1 help them come along. It's one thing to  
2 expect states to do things. It's another to  
3 show them the utility of doing it. I think  
4 maybe education the Department of education  
5 can be facilitative in that part as well.  
6 Thanks.

7 Ms. Pin Ahrens: I want to follow up  
8 on something that Kay had said that  
9 difference should be given to states as  
10 English states. The state is making every  
11 effort. I want to make sure that's correct  
12 in terms of what was said. I want to remind  
13 folks here that we are regulating ESSA, but  
14 these regulations have to be compliant and  
15 aligned with other federal regulations. So  
16 think about our conversation when we were  
17 talking about accommodations for students  
18 with disabilities. We also refer to section  
19 504, so I want to remind folks that one of  
20 the regulations we need to consider or I'm  
21 sorry one of the laws we need to consider is

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1 that title six of the civil rights act of  
2 1964. Last year the Department of education  
3 and the Department of justice jointly  
4 released guidance that I thought was  
5 phenomenal. I am going to refer to it in  
6 terms of what the students and parents are  
7 entitled to. In the fact sheet from Ed's  
8 website. It says English learner students  
9 are entitled to English learner programs with  
10 sufficient resources to ensure the programs  
11 are effectively implemented including highly  
12 qualified teachers, support staff and  
13 appropriate instructional materials. School  
14 districts must have qualified EL teachers,  
15 staff administrators to implement their EL  
16 program and must provide supplemental  
17 training when necessary, and so this is just  
18 a small portion. My point here is that this  
19 is a requirement that we must that the states  
20 and the districts must supply sufficient  
21 resources to effectively implement these

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1 programs. So when we are thinking about  
2 validity and reliability of assessments we  
3 have to ask the states to demonstrate that  
4 they are supplying sufficient resources to  
5 implement this law so that it also complies  
6 with title six. I know that there are a  
7 number of language access places that are you  
8 know filed with office of civil rights every  
9 year. A lot of these have to do with basic  
10 compliance with the law such as parents not  
11 receiving translators for their IEP meetings.  
12 I think historically there's been exclusion  
13 of EL's and this really needs to be addressed  
14 in the regulations, and there has to be very  
15 strong demonstration, but the states are  
16 doing what they are doing what they are  
17 legally required to do. It's not a question  
18 of are they making enough effort? Are they  
19 actually complying with the federal law for  
20 title six? They are required to effectively  
21 implement and to supply adequate resources.

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1 I want to note that you know there has been  
2 litigation over this we know in the case law  
3 versus Nichols non English Chinese students  
4 sought relief against San Francisco school  
5 district claiming they should be taught the  
6 English language instruction. Should we  
7 proceed in Chinese or should we provide to  
8 afford them equal education opportunity? The  
9 Supreme Court found that the San Francisco  
10 English only education violated title six of  
11 the civil rights act of 1964. There's been  
12 other similar cases that have been filed on  
13 the equal educational opportunities act of  
14 1974. I am not going to go into all of them  
15 because this would be a lengthy conversation.  
16 We need to remember as -- king reminded us  
17 that ESEA is a civil rights law and that this  
18 is a civil rights provision in the civil  
19 rights law and that these regulations have to  
20 be in line not only with ESEA and with title  
21 six and the equal education opportunities

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1 act. Thank you.

2 Mr. Evers: This is nearly a great  
3 distress. This is probably the most  
4 important issue that we face that I think in  
5 the last three days. There's a history in  
6 Wisconsin around this. There was pressure  
7 put on, there's certainly pressure put on  
8 there and second generation Germans state  
9 pushed having English taught in schools and  
10 there were civil disputes all across the  
11 state of Wisconsin. They just ignored that  
12 and kept teaching English, teaching for  
13 decades. I say that to assure people that  
14 everything that has been talked about is a  
15 realistic expectation of states. I think  
16 this is an area and this is a permissive part  
17 of the law or a permissive part of the law as  
18 was stated and there's no explicit authority  
19 for us to recognize to regulate this to my  
20 knowledge. I could be wrong. If we have  
21 packaged these things into guidance and

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1 guidelines and I just think that this is a, I  
2 won't say over reach. Everything that's said  
3 should be done. Everything that's been said  
4 should be done. I just believe that we have  
5 to find a way to make sure that we are  
6 following the law, and the law doesn't give  
7 us the authority in this area. In turn or in  
8 addition the Department under this ESSEA is  
9 innovative a-- they are enshrined to provide  
10 grants for states like new Hampshire that are  
11 looking at new ways to assess children that's  
12 good. I can't think of any other better use  
13 of that fund than to use it for that. We are  
14 talking about providing an appropriate  
15 assessment for children is expensive. We  
16 need federal government's not only technical  
17 assistance around this area. I think we have  
18 pretty good technical assistance in our  
19 states. We need resources and I think that  
20 we need a partnership with the federal  
21 government to make this happen.

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1           Ms. Rigling: I just wanted to follow  
2 up on the point about whether there's  
3 specific authority to regulate. I think  
4 there is. This is sort of what I touched on  
5 the first day that we can't regulate on  
6 something that's inconsistent with the  
7 statute or outside the scope. We don't need  
8 the statute to specifically say you must  
9 regulate on this particular topic in order  
10 for us to be able to regulate. I mean that's  
11 why we are here. We are here to regulate or  
12 consider regulations on things that are  
13 either unclear in the statute or where  
14 additional regulatory language would be very  
15 helpful in order to clarify the statute or  
16 further the purpose or intent of the statute.  
17 I don't want us to think and I apologize if I  
18 said something that would chill the  
19 conversation in this area because I think  
20 there are things in statute that we certainly  
21 could regulate onto clarify, explain, promote

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1 further the ability of English learners and  
2 indigenous populations who's native language  
3 is not English to be able to participate in  
4 the assessment systems of the states in a way  
5 that is valid and reliable and enables those  
6 students to be able to show what they know  
7 and can do. That's really what we are here.  
8 We are here to figure out are there ways that  
9 the federal government's regulations could do  
10 this in a way that's consistent with the  
11 statute?

12 Ms. Podziba: There's a lot of tents  
13 up. I suggest we go for five minutes. At a  
14 quarter of I think it's fair to give everyone  
15 a chance to stretch.

16 Ms. Pompa: I was going to ask if we  
17 had moved to the next question because others  
18 have addressed it if that's case I would like  
19 to address it. When were you planning to  
20 come back to it officially?

21 Mr. Rooney: You mean the second part

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1 of the first bullet? So I am fine with the  
2 second question if people had comments about  
3 the first part that we get to hear all of  
4 that.

5 Ms. Podziba: It's just others have  
6 gone into it. I would say let's include it  
7 many people have. Just a little bit harder  
8 for you to sift through I think we are there  
9 anyway. Thanks.

10 Ms. Pompa: In that case I think  
11 it's the very squishy notion to be able to  
12 say what to a significant extent is. I do  
13 thank Kay for your statement right now. I  
14 think there's regulation that might help  
15 clarify this and in the regulation I would  
16 not recommend that we set a number or mandate  
17 a cut off that we provide language that tells  
18 states the kinds of things that they should  
19 look at to determine if their languages are  
20 present to a significant extent which would  
21 include the number of languages spoken per

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1 grade level. The fact whether there are  
2 sufficient numbers of a language per grade  
3 level that can be so that the assessments can  
4 be validated to accepted psychometric  
5 practices that could be another thing that  
6 you could look at and the language of  
7 instruction. Those are just some ideas and  
8 there's others I think, but I do think  
9 providing clarification to states would help  
10 them to determine what a significant extent,  
11 but no cut off for the federal government or  
12 not a significant number.

13 Ms. Goings: As I look at this  
14 question it brings to mind a slowly, but  
15 increasing subpopulation of students that I  
16 struggle with as a speech language  
17 pathologists and my staff who try to assess  
18 these students and that's the population of  
19 cochlear implanted students who are just  
20 hearing for the first time and some of them  
21 are implanted at the middle school and high

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1 school level, so they are leaving a culture  
2 of not hearing to a culture of hearing. And  
3 then if we don't have a whammy on that many  
4 of them are English learners so it's a real  
5 struggle for them as we consider this reg  
6 let's consider all students and particularly  
7 with this specific disability.

8 Ms. Podziba: Thank you. Okay let's  
9 take a break and reconvene at 11.

10 Ms. Podziba: Okay. All negotiators  
11 here we will just give you another minute.  
12 Okay. We are going to pick up where we left  
13 off and Marcus you were next up.

14 Mr. Cheeks: Thank you Susan. I  
15 wanted to bring to light from the standpoint  
16 of a small state the importance of the  
17 cultural aspect of this question and I think  
18 you mentioned the aspect of a setting that  
19 would yield additional supports that could be  
20 passed back to states. I think that will be  
21 something definitely warranted and necessary,

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1 and a lot of places where some of the EL  
2 students are in such small numbers and people  
3 don't know what to do when those children  
4 show up, and they are speaking a different  
5 language. As much as we have done I think in  
6 terms of sharing supports we are finding  
7 pockets of places where people just don't  
8 know what to do. I think the awareness piece  
9 in terms of the Department really delving  
10 into particularly from my planning  
11 standpoint. What are states doing that will  
12 help us get to the point of every effort I  
13 think the every effort has to go beyond  
14 something that you are saying, yes, I am  
15 making my valued effort something should be  
16 reported and something should be documented  
17 to show what the effort looks like. At the  
18 same time the cultural piece is where people  
19 just don't know how to respond in as much as  
20 title six laws are in place that law  
21 constitutes compliance all the time. People

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1 just don't know even the absence of the law.  
2 They don't know those things are required.  
3 What we found I think is that really gets a  
4 better product is when people understand the  
5 rational and understand supports that are  
6 available and understand the necessity of  
7 providing necessary components to the EL  
8 students. We have found success in trying to  
9 look at academic language beyond just EL  
10 students because what we are finding and I  
11 was glad to hear Regina mentioned hearing-  
12 impaired students. Because of culture you  
13 end up with certain sets of children that do  
14 not understand academic language we found  
15 that is being used with EL students, and they  
16 also support the very same things with  
17 African-American students because of the  
18 cultural void and the academic language and  
19 in the absence of understanding academic  
20 language particularly in their homes. I  
21 would bring that aspect to light as we are

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1 trying to make the decision about defining or  
2 trying to understand how to codify the every  
3 effort that a state is making.

4           Mr. Wilbanks: Just to follow up on  
5 what Tony and some extent to some extent  
6 mentioned as we think about this challenge I  
7 think it's something we all note and perhaps  
8 would need to be done. Some of the things  
9 that we are talking about does cost money. I  
10 hate to inject budgets into this. As I look  
11 at it I just flipped to the federal budget  
12 they aren't flush with money. I don't  
13 believe the DOE is flush with money. I asked  
14 Tom if his state had more than he needed and  
15 he could send us some. I don't believe he  
16 has more than he needs nor does most states  
17 and districts in this nation. Think about  
18 how these things get implemented. I am a  
19 practitioner that's where I reside and that's  
20 where I think, but most I won't say most, but  
21 many I try to keep up with some of these

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1 things but most school districts in the  
2 nation are going through some severe budget  
3 challenges. When we put into regulatory  
4 language that we have to do something that  
5 bells go off and the dollars tally up. I  
6 know it would be good to say well you know we  
7 can't keep it's -- back as a reason not to do  
8 it. I also think that we have to be  
9 realistic and maybe here's an area for us to  
10 put some language in the guidance section  
11 rather than regulatory in helping states  
12 determine how they can do some of this and  
13 maybe do it better or cheaper or whatever. I  
14 do know that it's a great challenge. I  
15 certainly wish we could do it. It would be  
16 nice if we could do it, great, we will go  
17 home and start going it. Not only does it  
18 get played out in physical resources it gets  
19 played out on human resources. I think  
20 Marcus eluded to that. If we had some Arabic  
21 translated assessments we probably have some

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1 students that will be able to have a higher  
2 grade. I just want to caution us as we are  
3 here to develop regulation, but it also is  
4 regulatory as well as guidance that may be  
5 some of this we focus more on the guidance  
6 side than on the regulatory session, but  
7 really already says unless we think we can at  
8 the federal level make a mandate and it gets  
9 done without any money. I don't think that  
10 will necessarily happen as just for a little  
11 bit of realistic thinking on a couple of  
12 these things. I suggest we move more toward  
13 the guidance section than regulatory.

14 Mr. Hager: Thank you. A couple of  
15 comments starting with Tony, and I think also  
16 maybe Alvin's comments as well, and in the  
17 case in terms of you know guidance versus  
18 regulation and you know is this an area that  
19 we should be or couldn't be regulating. The  
20 whole reason why we are here is because the  
21 statute itself says if the Department wants

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1 to regulate it in this area they need to do  
2 the negotiated regulated or whatever it's  
3 called anything regular. I don't know what  
4 it stands for any more. All of these things  
5 are appropriate for regulation. The other  
6 point is especially in terms of the language  
7 and the statute about the, you know, make  
8 every effort it's discretionary in a sense  
9 but it's not totally discretionary. Make  
10 every effort means you have to make an  
11 effort. It doesn't mean you can do whatever  
12 you want or ignore it. That's a statutory  
13 requirement so if the money is there whether  
14 it's enough money is another question. If  
15 you want this money these are the things you  
16 have to do to comply with the statute. Then  
17 the question, the next question then is to  
18 what extent are the phrases in the statute  
19 will it be helpful to clarify that language  
20 in some ways or not? So that's really where  
21 we are now is this something that we could

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1 benefit from getting clarification? It  
2 wouldn't be violating the statute to do that  
3 and definitely the more things that can go  
4 into the regulation versus guidance I think  
5 the better.

6 Ms. Podziba: With the permission of  
7 the group I would like to take the five  
8 comments that are people who currently have  
9 their cards up and then ask Patrick to move  
10 us to the second question on this issue. I  
11 believe the Department has heard quite a bit  
12 on the first one, and I assume has enough to  
13 go on in order to develop some regulatory  
14 text. Let's hear these five questions or  
15 these five comments before we go to the  
16 second question. Liz you are next.

17 Ms. King: Thanks so to Tony's  
18 earlier point about the authority to regulate  
19 and re-enforcing what Ron said. It does say  
20 in the statute that should the Department  
21 choose to regulate, which implies they have

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1 the authority given they have the author  
2 under other law there is specific  
3 prohibitions around the Department's ability  
4 to regulate those are narrow prohibitions.  
5 It's a legal authority. The concept of  
6 negotiated rule making and the Department  
7 like we all had to request for information,  
8 and we all filed comments that's how we got  
9 to be here and then they decided of the  
10 things in 111 (b) (2) this is what they wanted  
11 to talk about regulating on. That's why we  
12 are here talking about these things. I will  
13 say what is in the negotiated rule making  
14 process is very similar to what happened  
15 which is some of us are going to advocate a  
16 lot for regulation because of the additional  
17 legal protection it's going to provide. Some  
18 folks are more inclined to do their jobs well  
19 without the need for regulation. I think we  
20 are sort of where we were expected to be in  
21 that system other than the one regulation

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1 that Tony got super excited about yesterday.

2 (laughter)

3 Mr. Evers: There's going to be  
4 another one coming up.

5 Ms. King: Can't wait. To sort of  
6 step back on the subject I think Alvin  
7 framing about limited funds is a great  
8 framing. It does call us to ask what is most  
9 important. We have limited dollars what do  
10 we spend them on. I think thinking about  
11 native language assessment in the context of  
12 accommodations access and inclusion and  
13 making sure that all students have the  
14 opportunity to access the content and are  
15 appropriately assessed so we can make sure  
16 the system is working for all students. I  
17 think it's always useful to remind us that we  
18 need to be very intentional and thoughtful  
19 about our requirements, and make sure that  
20 the requirements that we have that the  
21 decisions that we made are consistent with

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1 the values that Thomas pointed out to make  
2 sure all of our kids have the opportunity to  
3 be successful. I wanted to thank you for  
4 that framing. To put a plug I think a lot of  
5 supported common assessments across states  
6 specifically for one of the reasons we  
7 supported that is the efficiency that it  
8 provides and the opportunity to provide a lot  
9 more native language assessments because you  
10 have a lot larger student population who has  
11 access to them so each individual state isn't  
12 on the hook for financing their own native  
13 language assessment. Sort of to thank Marcus  
14 for his flag about -- and think of this as  
15 another opportunity to plug those best  
16 practices. Sorry I talk to fast. (laughter)  
17 thinking about universal design for learning  
18 may have been learned to serve one group of  
19 students to inform the best way to provide  
20 instruction for all groups of students, and  
21 we do certainly want to protected those

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1 services which are dedicated for English  
2 learners on the basis of their English  
3 learner status. We want to absolutely make  
4 sure that all children are benefitting from  
5 the best practices that you know. I mean  
6 there's leading educators across all  
7 different fielding here and we should make  
8 sure that expertise that educators informing  
9 all instruction for all children.

10 Ms. Podziba: I would like to offer a  
11 friendly amendment to the reg neg comment.  
12 We are expected where we expected to be on  
13 day three meeting one. The expectation all  
14 of you will see it in your interest to bring  
15 your concerns closer aligned to each other  
16 because of the benefit of being able to  
17 actually impact what the rule says rather  
18 than having the Department go off on its own  
19 and determining what it will say. Just a  
20 friendly amendment

21 Ms. King: Just to respond to that

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1 amendment. I think hopefully not necessary.

2 I do really do believe that we can find

3 consensus on all of these issues. I trust

4 everybody's motivation in this room and that

5 we were all brought together because of the

6 different perspectives that we all offer and

7 a recognition that whatever happens in

8 implementation needs to be grounded in the

9 context that we are all coming from.

10 Absolutely I hope it didn't feel that was

11 necessary but that is certainly my intention.

12 Ms. Podziba: Thank you.

13 Ms. Harper: I was just going to some

14 question and comment about regulation and

15 regulatory language or guidance, and I would

16 say that this section what we are talking

17 about here already is providing regulations

18 and is already giving that our students in

19 Puerto Rico are exempted from English medium

20 assessments of content and that was in the

21 previous law and that has carried forward

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1 into this. It's in our packet of materials  
2 and it's in all of our areas where we are  
3 referring. So students in Puerto Rico are  
4 exempted from English medium assessment  
5 content they are strictly given in Spanish.  
6 We have other titles within the broader space  
7 of ESSA that support native American language  
8 rights and our rights to describe programs of  
9 instruction and curriculum and assessment and  
10 evaluation, and were named align side of  
11 Puerto Rico but that right gets trumped by  
12 the one state, one test, one, you know, one  
13 language rule. What we are talking about is  
14 we want to align Native American language  
15 rights with those of Puerto Rico under the  
16 assessments here. This is already they are  
17 exempted there is specific language in here.  
18 We are talking about being able to talk about  
19 regulations. This is what's happening here.  
20 It's not all just guidance. We do have the  
21 authority to do that and are being asked to

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1 do that

2           Ms. Ricker: Thank you. First, I  
3 wanted to just comment that I agree with what  
4 was said before the break on the idea of  
5 having states define significant extent. And  
6 in part of that I do believe we talked a  
7 little bit about how significant extent and  
8 demonstrating making every effort as a nice  
9 check and balance for each other. I would  
10 ask them to provide guidance for states to  
11 consider not just the number or concentration  
12 of English language learners, but recognition  
13 in the law of English language learners,  
14 definitions so Native American students and  
15 Hawaii Pacific islander students as well. We  
16 provide that guidance to states as they  
17 define significant extent they consider other  
18 recognized English learners already in  
19 statutes in other places.

20           Ms. Pompa: Can I respond to that?

21 I said states should define with guidance

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1 from the federal government on the categories  
2 they should look at what to define.

3           Mr. Ahart: In terms of what the  
4 states are required to report would be  
5 fantastic if that could be aligned with  
6 what's already required under other titles,  
7 title six for example. It's not implicative  
8 and possibly contradictory requests for  
9 sharing information and that we take  
10 advantage of what's already in code and under  
11 other titles. I wanted to speak a bit about  
12 what Marcus and Alvin both referred to at the  
13 local and the state level. I think it's  
14 important to recognize from a fiscal  
15 perspective and other resource perspective as  
16 states' ability to support districts in  
17 carrying out whatever is in code. Mr. Chau  
18 referenced the huge percentage of the EL's  
19 that LA has in the state of California.  
20 However, there's many large districts in  
21 California with very large populations and

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1 smaller states such as Iowa, but certainly  
2 not exclusive to Iowa with a real drop in  
3 support at the state level and the federal  
4 level for supporting refugees in particular.  
5 Refugees are tending to land in our urban  
6 areas in smaller states that population can  
7 be very diverse and very concentrated, but  
8 not rise to the level of the state to meet.  
9 I look across the support materials here and  
10 you would think there's only one, second  
11 language in Iowa, and I have over a hundred  
12 languages and students from 88 countries of  
13 birth. The state Department really only has  
14 my district to consider on most of these  
15 issues, and therefore is not particularly  
16 compelled to be equipped to support us  
17 effectively. I would imagine that Marcus has  
18 a challenge similar to that in Mississippi  
19 and there's states all over this country that  
20 have that issue. A lot of what we are  
21 talking about here frankly would skate right

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1 over and not effect very meaningful way a lot  
2 of the students in a lot of states. I just  
3 it just wanted to lift up that it's really  
4 important that whatever is put into regs we  
5 keep in mind Derrick context, and my context  
6 and Marcus'. There's a huge array of  
7 situations that's very difficult to prep regs  
8 even if they are met are going to make a  
9 positive impact on how we are able to serve  
10 our students. So I know we are all  
11 interested in the best interest of all of our  
12 students. However, trying to protect our  
13 student's rights has to happen in the context  
14 of providing appropriate resources and  
15 context as we work those regs.

16 Ms. Pin Ahrens: I wanted to respond  
17 to those comments from Alvin and Thomas about  
18 money and the resources, and while I  
19 appreciate that in places like California  
20 with large populations or small places with  
21 emergent populations that cause a new

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1 additional need and demand for resources,  
2 it's not always about a lack of resources  
3 sometimes it's just a pure lack of will to  
4 comply at the district or state level. I  
5 will give you one example. I went on a tour  
6 with some of my civil rights friends to an  
7 award winning school in California. The  
8 principal proudly showed us the new  
9 facilities beautiful athletic facilities and  
10 talked about the extensive after school  
11 programs and music and technology it sounded  
12 fabulous. I was particularly pleased to see  
13 that she had a student handbook that talked  
14 about everything a student needed to know to  
15 succeed at that high school and to get into  
16 college. It talked about scholarship and  
17 course introductory and then I asked a simple  
18 question. I said, do you translate this into  
19 Spanish? I am an advocator for the Asian  
20 Pacific islanders and I wanted to know do you  
21 translate it into just one language? Her

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1 answer was no. Looking at the statistics at  
2 your school since I'm a former math teacher  
3 that's 255 students alone that are English  
4 language learners that are not getting to the  
5 handbook that according to DOJ guidebook it  
6 should be given in their language, and it  
7 should be given to every other language. I  
8 asked do you intend to translate this next  
9 year now that I flagged it as a problem as a  
10 civil rights advocate. She said no. I don't  
11 think we can. I looked at you in California  
12 you have access to translators. What is the  
13 cost? It can't cost more than upgrading your  
14 football and your track? This is  
15 discretionary spending that you have put  
16 money into so you are fine with expanding  
17 after school and athletics and other  
18 resources and you are not prioritizing your  
19 English language learners and you are winning  
20 an award, but you are not complying with the  
21 law in a very basic way. So I will say you

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1 know I am glad there are places that are  
2 trying to do the right thing, but what I am  
3 concerned and what is ESSA is making sure  
4 there's compliance for those places that  
5 refuse to do the right thing, so you know we  
6 have to provide guidance for this purpose and  
7 we have the authority to do it. So one of  
8 the things I would like to recommend since we  
9 are looking for solutions is that if a state  
10 believes they cannot provide appropriate  
11 accommodations let's have some reporting on  
12 their fiscal and non-fiscal barriers. I want  
13 insight into what is happening at the LEA and  
14 at the state level in terms of their non-  
15 committed discretionary spending. Where is  
16 that uncommitted money going because maybe  
17 that's the money that should be going into a  
18 few translations here and there that would  
19 provide impact right? So let's look at those  
20 priorities. The second thing I want to  
21 recommend you know in relation to this

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1 question of the determining languages where  
2 assessments in native language is needed I  
3 want us to think about and acknowledge that  
4 test development takes time. I appreciate  
5 the data that shows where the EL students are  
6 when we look at certain thresholds and you  
7 use certain numbers. We shouldn't be looking  
8 at the status of current students in the  
9 system because we are not going to develop  
10 the native language assessments in time for  
11 them. We should be projecting what the  
12 language needs are. I would recommend that  
13 any methodology the state uses needs to use  
14 census figures which is more consistent  
15 across the U.S. than the numbers that you  
16 know are provided through analysis of NCS  
17 data and some state variation for  
18 identification of EL's, so to get a more  
19 accurate number let's use those census  
20 categories or that census methodology of  
21 identification through the home language

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1 survey. I believe the national academy of  
2 sciences actually studied this in 2011 as to  
3 whether census methodology and accounts were  
4 accurate and could predict, and were  
5 comparable to the states counts, and there  
6 was finding that census or methodology could  
7 be utilized to a degree or accuracy and  
8 consistency. And I think on that point they  
9 recommended the use of the three year  
10 community surveys over the one year community  
11 surveys, and then I also want to ask that  
12 states incorporate, look at some of the  
13 changes in educational outcomes at the state  
14 level which might flag some of those emerging  
15 populations that are appearing in  
16 concentrated areas in districts so that we  
17 can take care of those issues in smaller  
18 states.

19 Ms. Podziba: Patrick, I am going to  
20 ask you to read out the second question.

21 Mr. Rooney: Thank you. We have a

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1 lot of good comments on this issue paper in  
2 general. I will read the second question I  
3 think Rita and a lot of comments so far have  
4 addressed the question already, so I think we  
5 have a lot that we can take back and think  
6 about what that might mean if we were to try  
7 to think about this in regulations, so if  
8 people have other things we wanted to add to  
9 that. I think we have a lot of feedback.

10 The question is how does the need to ensure  
11 all English learners are assessed in the  
12 language formed most likely to accurate data  
13 in potential challenges in states that may  
14 face languages other than English?

15 Mr. Evers: This is a general  
16 comment. I express authority. Regulations  
17 do need to clarify congressional intent.

18 It's not to make new policy and so here  
19 Congress has looked at this issue and chose  
20 not to require any triggers or so on and so  
21 forth. As we develop this large list of

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1 regulations, I want to make sure that they  
2 are used to clarify congressional intent.

3 Ms. James: I just have been just  
4 sitting back listening and I immediately  
5 started thinking about the staff in my  
6 building. I started to wonder how my staff  
7 will ensure that we are teaching the content  
8 in a way where all students can obviously  
9 access it. And then what will teachers do if  
10 all of our students have not all but our EL's  
11 are able to receive an assessment, and in a  
12 different language that they are not able to  
13 translate themselves. What does that mean  
14 for professional development? What does it  
15 mean for data driven instruction? Then if  
16 the instruction is in the English language  
17 how do we ensure that tests and or  
18 assessments are valid and or reliable  
19 consideration the process that we took to  
20 assess the content is not in the same tone or  
21 the frame as it was taught. So then the

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1 other factor that I think about with regard  
2 to assessments for our EL's are the need to  
3 begin to think about guidance associated with  
4 perhaps accommodations for our EL's and so  
5 specifically when I think about a student who  
6 has the ability to have resources next to  
7 them and they are utilizing the resources  
8 during their assessment IE, a dictionary and  
9 maybe even another person their first looking  
10 at this assessment in the English language  
11 and then taking the time to translate in  
12 their native language using the resources,  
13 then responding to the question in their  
14 native language and then taking the time to  
15 translate back into English. The questions  
16 that I have the two things that I really want  
17 to point out really does make me wonder about  
18 the staffing portion which buckets into the  
19 area of resources. I completely understand  
20 what it means to think about money and I also  
21 understand what a scale looks like. If you

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1 are given a hundred whatever it is or a  
2 hundred pennies or whatever you have there it  
3 doesn't matter to me the unit of measurement.  
4 My point is you are only given a hundred.  
5 Something else is going to compromise. If we  
6 are saying to ourselves amongst each other  
7 that we are willing for something else to  
8 compromise. We are going to have another  
9 discussion years to come about how to fix  
10 that. So I really would encourage us to be  
11 very thoughtful and in regards of are we  
12 going to regulate something or are we going  
13 to offer additional guidance then perhaps  
14 have accountabilities at the state level that  
15 ensure equity. The other question or comment  
16 that I made really goes back to a statement I  
17 made yesterday Kenji regarding accommodations  
18 for newcomers not just newcomers, but for all  
19 EL's which is something I would really like  
20 to have a response to.

21 Mr. Rooney: Do you want to clarify

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1 that question if you are looking for Kenji to  
2 response?

3 Ms. James: Yesterday I asked about a  
4 question for newcomers when we talk about  
5 state given assessments I am thinking deeply  
6 about what's necessary in order to capture  
7 what students have learned and or mastered or  
8 even before they learned it in America what  
9 they bring to the table?

10 Mr. Hakuta: Thank you for bringing  
11 that back up. I think you know again, the  
12 assessment through the native language is a  
13 form of accommodations. It is and it is  
14 appropriate that as we said for students who  
15 are either have received or have a history of  
16 receiving instruction in that language or if  
17 the assessment is used for other purposes  
18 such as for just understanding where they are  
19 coming from and what their background is for  
20 having that available I think is really  
21 important. Then there are accommodation

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1 practices that make both universal as well as  
2 targeted that could help students more avidly  
3 express their knowledge of the area being  
4 assessed and that could involve anything from  
5 you know glossaries that are available up  
6 front insurances and this sort of in a sense  
7 this isn't an accommodation, but it is  
8 universally available but making sure that  
9 the items avoid unnecessary language demands  
10 that are not construct relevant, so  
11 additional time and availability of  
12 instruction through the native language and  
13 so forth. What we do know is that there are  
14 some of those practices that are helpful but  
15 for students who are new arrivals that are  
16 coming with essentially no English there's  
17 nothing other than a native language  
18 assessment that it's again you know validated  
19 and appropriate for those students and so  
20 that doesn't just need a simple translation  
21 through Google translate of that test that's

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1 made available. You know basically so I  
2 think there are practically speaking there's  
3 going to be students whom there is nothing  
4 available because the language isn't  
5 represented sufficiently in numbers. No  
6 amount of added accommodation in English in  
7 the practices and mostly helping students who  
8 are sort of that some intermediate advanced  
9 level of proficiency in English would be  
10 helpful. I am afraid that there are always  
11 going to be some number of students and maybe  
12 a lot of students for whom accommodation  
13 either through adaptation of English or  
14 through native language versions of the  
15 assessment would not be available.

16 I appreciate you saying that.

17 Ms. Jackson: I appreciate you naming  
18 that you heard a lot on this already. I will  
19 try to keep this brief. We are talking about  
20 a really complex but growing group of  
21 students are right now classified under one

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1 general term. We had people speak to the  
2 variation of what that term means. I want to  
3 stress that I don't think there's any  
4 advantage or great benefit to giving a  
5 blanket set of accommodations for all EL's  
6 and that it really just as 504 plans an IEP's  
7 need to take into account that an individual  
8 child's needs, history and the tricky part  
9 with that is you don't want it to then be on  
10 an individual basis be more influenced by  
11 what's available at the school or what's  
12 being done at the school but what is best  
13 practices. That's something that we will  
14 have to try to navigate. It really you know  
15 one child, one el in one classroom or even  
16 two in the same classroom they have different  
17 profiles and needs. What's being done in  
18 terms of accommodation should translate to  
19 the testing environment. That's tricky  
20 navigating that you don't want the cart  
21 before the horse. If the child is never

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1 using dual language dictionary in the  
2 classroom just providing one on a testing day  
3 will not necessarily benefit the child or be  
4 a factor in their ability to show what they  
5 understand. Thank you.

6 Mr. Pohlman: I would like to sort of  
7 talk about the interaction between providing  
8 the state developed assessment languages  
9 other than English and accountability a  
10 little bit more. I am thinking that guidance  
11 or regulations also need to be clear and you  
12 guys have likely thought about this about  
13 both measuring proficiency but then also  
14 growth. Many of our state level  
15 accountability systems that are both of the  
16 state levels are people who are looking at  
17 growth as a measure, but we have authorizers  
18 and others using growth in innovative ways.  
19 I think what strikes me most about this  
20 conversation is that there's guilt because  
21 you have a horizontal growth. You have the

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1 comparison amongst schools or students in  
2 schools that maybe highly concentrated and  
3 have no EL population and that same  
4 assessment needs to be able to measure  
5 proficiency between those students of the  
6 same grade level. It also needs to be able  
7 to measure the growth of proficiency between  
8 grade levels for an el student who may  
9 transition between taking the test with the  
10 translator accommodation and then not taking  
11 that test, and how do you measure that  
12 student's growth between those two  
13 assessments year after year? I think that's  
14 an important measure that for jurisdictions  
15 that are small and have high levels of  
16 students with that are speaking languages  
17 this could have a dramatic effect on a state  
18 level GP or state level formulas. I want the  
19 folks at Ed to know I was thinking about  
20 that, but to also consider that within any  
21 regulation of guidance to states on how they

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1 should be thinking about integrating  
2 translator accommodations.

3           Mr. Payment: I have a framing  
4 comment and so addressing the question of  
5 what challenges do the states face? So I  
6 think one of the challenges is clarity and so  
7 I am back and forth between because I'm an  
8 administrator too because I know the  
9 application in terms of what resources do you  
10 have and what can you do practically with  
11 what you have, but without the clarity. So I  
12 am back and forth between guidance and  
13 regulation without the clarity, then we are  
14 going to default to all the other stuff that  
15 happens back home including the politics and  
16 the legislature and et cetera. Without  
17 something strong I think too often we default  
18 back. I just want to give a quick overview  
19 of established law and where we are at right  
20 now. So we are at right now is when the  
21 constitution was written there was a

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1 repudiation of the first approach in  
2 education was puritan education. It was  
3 religious education okay and in the schools  
4 and in schools at that time the constitution  
5 was written to repudiate that. There's  
6 specific and I know this is the strict  
7 constructionist and right wing like to say  
8 why isn't you know all of these things being  
9 honored in the constitution they were never  
10 in the constitution. The constitution  
11 prohibited those. So we don't have a  
12 national right to an education per se except  
13 for American Indian students because it's in  
14 the treaties. In the 13th amendment to the  
15 extent to anybody has a right to an education  
16 and we have an equal right and that's the  
17 13th amendment to the equal protection  
18 clause. Then flash forward so I guess that  
19 wasn't clear enough so then in 1964 we had to  
20 pass a civil rights law. That is what we  
21 meant by equal protections and this is what

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1 happens, and then title one is established in  
2 order to provide for the equity aspect versus  
3 equality so that's a very simple concept that  
4 gets lost in this. So equal measures is  
5 inherently unequal depending on your American  
6 who you are as an American, and so equity  
7 measures are what title 7 and ESSA are all  
8 about. What can we do to make more equal  
9 through practice and through funding and  
10 resources so that everybody can learn so we  
11 have an equal right to an education? Without  
12 that we have a separate but equal doctrine  
13 which the 1964 civil rights act was intended  
14 to abolish and involve the society of past.  
15 Having said all of that I also know that  
16 states have all of the restraints and  
17 constrictions and funding and all the  
18 politics back home, and this part of the  
19 party saying this and this part of the party  
20 saying that. I think without clarity in the  
21 regulation I think and it may seem contrary

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1 to those who expressed themselves at this  
2 level that the reality and the funding  
3 sources, and you know you are getting  
4 basically an un-funded mandate in large part.  
5 I think this really supports what the  
6 practitioners at the state level are saying  
7 because without something strong you are  
8 going to be able to do the equity measures  
9 you are going to end up defaulting back to  
10 the minimal that you think that's adequate to  
11 do. So I guess I went through all of that to  
12 reinforce that. I think we need real strong  
13 language to make clear. I think we need to  
14 make it clear in guidance that the funding  
15 needs to flow to make sure it happens. If a  
16 state is making decisions not to do something  
17 that is equitable based on not having the  
18 resources I wonder about that too. Stop for  
19 a second. If all of these funds are intended  
20 to be undue the un-equities then what are  
21 they doing with the funds if it isn't to do

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1 to arrest the inequities?

2           Mr. Hager: Thank you. I just wanted  
3 to quickly bring back some of the  
4 conversation from yesterday as applied to the  
5 language and form. First of all Audrey's  
6 point about all the things we talked about,  
7 the exposure to the platform and exposure to  
8 computers to ensure the format is  
9 appropriate, getting accurate results and the  
10 second one is the students that are English  
11 language learners with disabilities may need  
12 the double accommodations to meet both of  
13 their EL and disability related needs. So  
14 you are working on the form of the assessment  
15 you need to be thinking about the  
16 implications for students with a disability  
17 who also are an English learner to  
18 accommodate both perspectives.

19           Ms. Harper: We have the question the  
20 need to ensure all EL's are assessed in a  
21 language most likely to yield accurate data

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1 on their knowledge and abilities and how does  
2 that interact with the state, you know how do  
3 we describe that in here? And a little bit  
4 today I have got, I had a little bit of  
5 distraction this morning because at home our  
6 students in our language medium school our  
7 stem students who are learning all of their  
8 content in the Native language throughout  
9 their entire elementary years are at home and  
10 they said oh we are gathering the sap for the  
11 maple syrup. We have so much we don't have  
12 anywhere to put it. They are asking me I am  
13 in Washington DC in a cab in the city. I  
14 said you know put it in the pen and fire and  
15 uncle will be out to boil later and we will  
16 make do. It will get you more containers  
17 that's where I am at. My heart is at home in  
18 the woods and picking sap and being with  
19 these kids who are doing all of this in their  
20 Native language, Ojibwe language. We have so  
21 many barriers back home against us and our

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1 right to be able to provide a program of  
2 instruction for our students. A lot of  
3 barriers come through these ideas and  
4 interpretations surrounding assessments which  
5 we can't abstract and say, and assessment is  
6 only if this over here is part of an entire  
7 program of instruction that would necessarily  
8 include pedagogy and we are -- and all of  
9 these aspects and assessments. How in the  
10 language of instruction, how many different  
11 all of this stuff must be, you know,  
12 conferred in our programs of instruction.  
13 How do we consider all EL's, and remember I  
14 told you guys about that. The different  
15 context in which our EL's and how do we make  
16 this as least burdensome as possible? We  
17 have ways to do this for our Native American  
18 language medium students what we talk about  
19 is that we want to align the other titles.  
20 We want to align our rights within title  
21 three and the Native American languages act

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1 with the assessment provision and this title  
2 one here. We want to be able to exempt our  
3 students from Native American, from English  
4 language medium assessments and be able to  
5 provide them through our Native American  
6 language mediums. It's not only our kids at  
7 home in Minnesota. We have kids in you know  
8 New Mexico, Arizona and Montana and Hawaii  
9 and Alaska and if we look back on these  
10 charts where they say oh you know here's some  
11 of the languages. Alaska has all of their  
12 native languages recognized as official  
13 languages of the state, and yet they are not  
14 allowed to test through any of their 21  
15 native languages and you pick only one Alaska  
16 native language is listed in this chart. If  
17 we go to you know Arizona doesn't even  
18 mention Navajo language New Mexico does. If  
19 we go to Hawaii, Hawaii is the official  
20 language of Hawaii right next to it with  
21 English. Hawaiian language medium is not

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1 mentioned in those statistics in Minnesota  
2 where all 11 federally of the recognized  
3 tribes has declared the native language of  
4 the nations. Our Native American languages  
5 are not mentioned in Minnesota. We have  
6 concern. Montana which has ten Native  
7 American tribes and languages, doesn't  
8 mention one. German. You know? Native  
9 American languages are not afforded  
10 considerations but we have specific rights in  
11 title three. We have section 3127 of  
12 American languages act which state programs  
13 for native programs and Puerto Rico and not  
14 withstanding any part of this provisions that  
15 under this part that serve native American  
16 including native American Pacific islander  
17 children and children in the Commonwealth of  
18 Puerto Rico may include programs of  
19 instruction, teacher training curriculum  
20 development and evaluation assessment designs  
21 for American children, and children of

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1 limited Spanish language proficiency except  
2 the outcomes of these such children should be  
3 increased in English proficiency of such  
4 children. We have every right to determine  
5 our programs of instruction which necessarily  
6 contain assessments. However, we come back  
7 over to this states says one test one  
8 language. We would like the same exemption  
9 that Puerto Rico has received in their work  
10 books where they are described as limited  
11 Spanish proficient, so they are actually  
12 educated in the medium of Spanish language  
13 and their exempted from taking language arts  
14 tests in the medium of English. If we go to  
15 Puerto Rico's accountability workbook we can  
16 find that they actually end up studying  
17 English language arts as a content area, and  
18 their assessment is still, is still through  
19 Spanish medium. So they are exempted from  
20 having to take those English language arts  
21 assessments in the medium of English, and

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1 they also tried to work on their math  
2 assessments in Puerto Rico on their  
3 translation attempts. They have been not  
4 very they didn't come off very well in their  
5 problems with the validity and reliability of  
6 the results that came out on their math  
7 assessments that were translated to Spanish  
8 if we are talking about what is the language  
9 and foremost likely to yield accurate data on  
10 their students. Recall that we have all of  
11 these different categories of students that  
12 must be considered in here and that as Native  
13 American language medium schools we have  
14 every right to consider that. We even have,  
15 we have been working at this for 10 and 20  
16 and 30 years in our native language  
17 community's with Native American language  
18 schools. We have developed our own systems  
19 of assessment. We have not been given  
20 millions of dollars from any government form,  
21 so create these we did, this on our own and

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1 we did this on our own urging and we have  
2 developed our own assessments of student  
3 academic achievement. We have done validity  
4 and reliability checks on them we have got  
5 this in place because we are good educators.  
6 We are really good at what we do. We are  
7 making a difference and we are really good at  
8 understand that's an important part of a  
9 program of educational instruction. We want  
10 to know how we are doing for our communities  
11 and how are we responding to our communities  
12 and what we need to be able to develop our  
13 nations much stronger. We have done this.  
14 It's not been at a huge millions of dollar  
15 cost. It has taken human resources but  
16 that's our priority in our native language  
17 need I didn't mean schools communities. We  
18 have prioritized that and we have done that.  
19 So you know we developed measurements of math  
20 and reading and language arts in the language  
21 of instruction in close to 17 states where

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1 our enacted language medium schools are  
2 located and we have done all of the validity  
3 and reliability checks, and we reform after  
4 five years and we do all of this stuff and we  
5 have got it down. So we have ways to provide  
6 this to our Native American language medium  
7 schools. We would like to suggest that the  
8 rules should align the title three sections  
9 that grants us that civil right with this  
10 assessments protection. We want the same  
11 rights at Puerto Rico. We were before this  
12 country began doing this. We are  
13 discriminated against and we are not given  
14 this right. Yet, one other state like  
15 territory is given the right to do this to do  
16 this above and beyond what is in in the title  
17 one. We want to assert our right for Native  
18 American language schools in Native American  
19 language medium schools. We could also  
20 describe that our students would be exempted  
21 from English medium assessments until a

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1 certain number of years after English  
2 language becomes the language of instruction  
3 for more than 50% of the time. You know so  
4 we would define our Native American medium  
5 schools as where schools content is taught in  
6 50% or more of the day. There are some of  
7 our schools do not have the capacity to go  
8 through 12th grade they do a transfer out and  
9 they reduce the number of percentage of the  
10 day in which the content is taught in the  
11 native language. We do account for that as  
12 well in our schools and so when the school  
13 falls below 50% of the day taught through the  
14 medium of the native language then they are  
15 no longer a language medium school they are  
16 effective an English medium effective school  
17 and they should be subject to medium  
18 assessments because they are English medium  
19 students. What we are talking about is  
20 specific and rightful equitable consideration  
21 for our native language medium students in

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1 this law. Let's make that kind of rule.

2 Thank you.

3 Ms. Pin Ahrens: I wanted to clarify  
4 in the assessment in providing more likely to  
5 yield accurate data. We have been focusing  
6 on assessments in our language that's what  
7 the issue papers have looked at. We have to  
8 remember and acknowledge other accommodations  
9 that maybe appropriate. Some of them are  
10 linguistic and they are not always translated  
11 and some of them are nonlinguistic. Some of  
12 these nonlinguistic accommodations could  
13 include extended time in addition to the use  
14 of glossaries or what was a side by side  
15 translation because research has shown that  
16 when you have glossaries or additional things  
17 that students have to refer to the  
18 accommodations not effective unless they are  
19 given that additional time. Other  
20 accommodations also include offering students  
21 the ability to demonstrate their knowledge in

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1 different ways. I came across the  
2 phrase -- I'm not a researcher I don't  
3 understand what that means an example that I  
4 read about in computer adaptive test and  
5 other computer based testing, you know, there  
6 was the issue raised that students have to  
7 type in answers, but if they may be able to  
8 demonstrate their knowledge by not  
9 necessarily typing it in but showing diagrams  
10 or speaking it in their native language, and  
11 having those results inferred in another way.  
12 So I guess I am really wondering about I hear  
13 the questions about we don't necessarily have  
14 the expertise we need to train our teachers.  
15 What sort of technical assistance is  
16 currently available at the federal level  
17 because in the statute there's technical  
18 assistance? It sounds like that will be  
19 provided to states for this you know  
20 providing the linguistic accommodations in  
21 terms of developing tests in other languages.

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1 What about for all the other pieces of  
2 accommodations? I want to understand, you  
3 know, are we providing any sort of guidance  
4 to states and districts on these other forms  
5 of accommodations that they can utilize?  
6 Whether it's bilingual or telephonic services  
7 to provide interpreters and to read questions  
8 or instructions out loud and then the other  
9 question I have is you know if there is a TA  
10 available what's the utilization rate, you  
11 know, our states and districts seeking it  
12 out, but because it's not available you know  
13 they just don't have access or if it is  
14 available are they using it? I think this  
15 would be a good indicator as to whether we  
16 have and this is definitely out of the scope  
17 of this committee to ask for more  
18 appropriations for the Department of  
19 education to provide this sort of technical  
20 assistance. I think in terms of the  
21 regulations in what we have the authority to

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1 cover you know we don't live in that perfect  
2 world I want. I think it would be helpful to  
3 direct states to seek out the technical  
4 assistance that's available in the statute  
5 and to report on their utilization of that  
6 technical assistance, and then also provide  
7 you know some information about technical  
8 assistance they would want because I think  
9 that would be helpful for all of us to  
10 understand, you know, what other barriers  
11 there are that are not related to resources?  
12 And it would be helpful for our preamble, and  
13 I remember we said that we were able to write  
14 in our preamble to the regulations. I would  
15 like to have it included in our preamble what  
16 those forms of technical assistance are  
17 available and what the consequences may be to  
18 states and districts that don't comply with  
19 all of the federal and civil rights laws that  
20 address this accommodation issue not just for  
21 EL's but also for students with disabilities.

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1 Ms. Jackson: One barrier or one  
2 issue I think that we haven't addressed, but  
3 I think is more appropriate for 5 A instead  
4 of 5 B. Is the issue of accurate  
5 identification of el students in a way that  
6 is not detrimental and prohibitive to their  
7 access obviously? In my district students  
8 are classified when parents check one box or  
9 the other upon registering with the district.  
10 This is led to really variable results often  
11 like inaccurate results. So I know that we  
12 may not be able to be prescriptive about it  
13 but having a much more broadened and  
14 exclusive definition. I know Leslie referred  
15 to the categories I want to see what that is.  
16 There has to be some guidance at least on how  
17 to determine and who is an el so that if we  
18 are talking about how we are going to  
19 accurately assess their knowledge and  
20 abilities we have to actually be assessing  
21 the right kits.

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1           Mr. Chau: I want to touch on this  
2 question again representing California which  
3 we have based on this data 1.5 Million EL  
4 students in our state. We represent  
5 certainly the bulk of the students who would  
6 be served by this issue. I just want to  
7 emphasize that I think it's important to  
8 reemphasize what was mentioned before that  
9 there would be no threshold for guidance.  
10 This is something that states can make  
11 determinations about in partnership with  
12 their agencies as well. In part of the  
13 regulations it talks about the ability for  
14 local education agencies to extend the time  
15 line for which students are assessed in the  
16 other language, correct? So I think that if  
17 we also focus on local education agencies  
18 making that determination I think that will  
19 be key. I want to provide a context -- may  
20 even though we have so many students that may  
21 not actually be that impacted. The challenge

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1 may not be as severe because of the prop 2.7  
2 eliminated bilingual classes for -- when we  
3 talk about assessing students in their native  
4 language we have 1.5 million of them. The  
5 majority of the students who might be  
6 possibly assessed in their native language  
7 would mainly be the newcomers. Most of our  
8 English language learner plans at the agency  
9 level are focused on English acquisition  
10 starting from that first year on and so we  
11 wouldn't actually be assessing based on at  
12 least in our district our master plan after  
13 basically one year of sort of bi- language  
14 education that covers some of the content  
15 area in their native language after that.  
16 The expectation that most of the core  
17 instruction is English on their knowledge and  
18 abilities. If primary instruction is in  
19 English we would expect those students would  
20 be taking those tests in English after the  
21 first year. So I just wanted to provide that

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1 context to at least share with the committee  
2 about why this might not have a big impact on  
3 California even though we have such a huge  
4 student population of EL students.

5 Ms. Podziba: Thank you. Let's take  
6 a bit of an early lunch today and come back  
7 at 1: 05 and we will start with 5B.

8 Mr. Rooney: That's fine. If you are  
9 looking for a lunch and you are looking for a  
10 room to meet in 1W 109 is the room you can  
11 use. It's back towards the same place you  
12 were the last two days. We are changing it  
13 every day. 1W 109.

14 Ms. Podziba: Just a couple of things  
15 to remind you of public that there's a public  
16 comment sheet. There was a phone that was  
17 found at the hotel if anyone lost their phone  
18 it maybe at the hotel. It had a blue cover  
19 on it. If you lost a phone with a blue cover  
20 it's at the hotel.

21 Ms. Jackson: I also misplaced my

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1 glasses last night if they happen to show up  
2 at the hotel if you can see them that would  
3 be awesome.

4 Ms. Podziba: Either that or they are  
5 in heaven with all the other glasses that  
6 have been lost. About the subcommittee, we  
7 meet two weeks from today. That's a very  
8 short time from the work of the subcommittee.  
9 The people who intend to participate on the  
10 subcommittee at the break get together to  
11 identify a time for a conference call.

12 Patrick, do you have something to say about  
13 that?

14 Mr. Rooney: I appreciate the people  
15 that volunteered. Again, the subcommittee  
16 that spent a lot of time talking about these  
17 issues I appreciate your willingness to keep  
18 engaged and thinking through it in the short  
19 interim between the meetings. If possible we  
20 are thinking about how to take all of this  
21 feedback and draft something that's

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1 responsive to the comments we are hearing  
2 that we can bring back for the basis of  
3 discussion in session two. If the  
4 subcommittee we are going to develop some  
5 sort of proposal or recommendation or extent  
6 for the committee if we can get it by say  
7 middle of next week if that's possible? That  
8 would help us get a chance to think about how  
9 to incorporate that idea into the discussion  
10 that we are putting together for starting on  
11 April 6th. I wanted to flag that as a  
12 possibility that if you had something to  
13 share with the committee for the Department  
14 that we can think about having incorporated  
15 by the next Wednesday it would be very  
16 helpful for us.

17 Mr. Payment: I would like to suggest  
18 when we do break that before we scattered  
19 that we maybe meet over at the Department of  
20 education and align our schedules. Monday  
21 might work well for me. I agree whatever we

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1 are going to do it's helpful you have it with  
2 enough advanced notice.

3 Ms. Podziba: Subcommittee doesn't  
4 have decision authority. It should be as a  
5 recommendation to the committee, anything  
6 else before we start? I do know that a  
7 couple of people have to leave before five  
8 o'clock traffic issues require them to leave  
9 a bit early to make their flights.

10 Ms. Jackson: I am also flying out.  
11 At the break if everyone is flying out early  
12 could meet over under the TV over there it  
13 would probably be good to coordinate cabs, if  
14 possible?

15 Ms. Podziba: With that I think we  
16 are ready to move to 5B.

17 Mr. Rooney: We will see if this  
18 works? We are going to switch to 5 B, which  
19 is now focusing on English language  
20 proficiency assessments. I did want to say  
21 one or two things if it's very rich this

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1 morning and suggestions which I definitely  
2 much appreciate. I think there were a couple  
3 of comments we spent a lot of time talking  
4 about native language translations. I  
5 appreciated Audrey and Rita and a bunch of  
6 others talking about the context of  
7 translated in context of how states are  
8 providing accommodations and accessible  
9 students and translation are one potential  
10 option that the states have and is that going  
11 to work better? And you know the other piece  
12 of this about Rita's comment around  
13 compliance with the law, and title six is  
14 part of, you know, the other piece we talked  
15 about yesterday? The Department does a peer  
16 review of state assessment systems and  
17 through that peer review we look at how the  
18 state developed their assessment and the  
19 documentation they have that the test is  
20 valid, reliable, fair accessible and that it  
21 provides good data for all kids. The

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1 translated assessments or not they have to be  
2 looking at that data and looking at that  
3 evidence and providing the documentation it  
4 gets reviewed by peers. To remind you it  
5 follows the APA testing standards that are  
6 the experts in the field that have identified  
7 how to design a good assessment system. All  
8 of these assessments go through and they are  
9 documents how they design their assessment  
10 systems. I am going to try this. The other  
11 thing that I think Rita mentioned and a few  
12 others around technical assistance. I did  
13 want to address this a little bit. There's a  
14 bunch of guidance documents that the  
15 Department has put out through elementary and  
16 secondary, and in the language acquisition  
17 office where our office of rights for  
18 accommodations for all kids including English  
19 learners. There we fund some non-Department  
20 centers that provide technical assistance to  
21 states. There's a series of regional centers

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1 for each group of states that can provide the  
2 assistance for whatever the states think they  
3 need assistance, and they have a plan where  
4 they work directly with those providers to  
5 get assistance on whatever topic or education  
6 they need. There's also several content  
7 related centers, one of which is the national  
8 clearinghouse for English language  
9 acquisition. I said that right which is  
10 specifically providing assistance to states  
11 around English learner issues. There's also  
12 a center for standards and assessment, and  
13 standards and assessment implementation which  
14 is providing direct assistance to states as  
15 they requested around their assessments.  
16 There's technical assistance vehicles that  
17 are provided. We also have a small  
18 discretionary grant program which is  
19 specifically around assessments and we  
20 provide grants to states to try to identify  
21 new or different ways to assess or report or

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1 identify how to better provide better  
2 accommodations and accessibilities for all  
3 kids including English learners and students  
4 with disabilities. That's been ongoing since  
5 NCLB and provided grants and we provide small  
6 grants to state where they can identify  
7 different ways they can view their  
8 assessments and scale through other needs. I  
9 just wanted to give that little bit of  
10 context before we started. With that I want  
11 to switch to English language proficiency  
12 assessments. As we start I would like to ask  
13 Mr. Hakuta to give history around this topic.

14           Mr. Hakuta: Thank you. So English  
15 language proficiency assessments have evolved  
16 since their introduction in 1970's and to the  
17 purpose of those assessments some of you may  
18 recall assessments like the bilingual syntax  
19 measure and the IPT and the loss and so  
20 forth. We are introduced to identify limited  
21 English proficient students which is who we

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1 call the students then for purposes of title  
2 six compliance with the civil rights act of  
3 1964, and those requirements have been called  
4 the loud remedies. In the present day in  
5 coronation is the dear colleague's letter  
6 that Rita mentioned earlier. In the part  
7 about identification of students who would  
8 fit under title six that's how those  
9 assessments initially got introduced and  
10 mandated for English learners being  
11 appropriate services to meet their language  
12 and academic needs. These assessments have  
13 grown in sophistication over time, and under  
14 no child left behind they became part of ESEA  
15 accountability, but under the requirements of  
16 title three with the requirement that the  
17 English language proficiency standards upon  
18 which they are based the term is that they be  
19 aligned with the content standards of the  
20 state. ESSA similarly requires the alignment  
21 of the ELP standards to the state academic

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1 standards. So it's the alignment or various  
2 federal documents that have used another term  
3 which is actually technically more  
4 appropriate which is correspond that the  
5 English language proficiency standard should  
6 correspond to the academic standards and the  
7 reason why alignment is technically correct  
8 is alignment really refers to basically  
9 looking at the same thing, so if you are  
10 looking at a map construct and that an  
11 assessment aligned to it should measure math  
12 right? And so language is the language  
13 that's needed in order to access and  
14 demonstrate knowledge of the content and so  
15 it's really, we need a different term than  
16 alignment although the law has an alignment  
17 in it. The term correspondence has been  
18 introduced and I actually think it's a good  
19 way of saying they need to be related and  
20 supportive of them of the standards. For  
21 example, if you are talking about a

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1 mathematical standard around being able to  
2 understand the reasoning of others and so  
3 forth around the particular math topic is  
4 really the listening and the speaking skills  
5 that are involved in understanding of that  
6 math construct that needs to be looked at.  
7 In any event this idea of alignment is that's  
8 what it means and that that's the crux of how  
9 we should think about the relationship  
10 between academic language and the kinds of  
11 academic assessments that measure the  
12 academic constructs from the questions and  
13 5A. We know from research with the older  
14 academic assessments, and I already mentioned  
15 this and of course the last discussion that  
16 they are related to the academic assessment.  
17 We have research that shows correlations  
18 between academic language, academic  
19 assessment performance and English language  
20 proficiency assessments and they are  
21 correlated and that correlation varies

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1 depending on the level of English language  
2 proficiency and that's a known fact. We  
3 don't know and there will be research coming  
4 out and in the future about the how they will  
5 play out in the current assessments being  
6 used which have larger language. Current the  
7 quality of academic assessments is regulated  
8 as Patrick mentioned through the title one  
9 peer review process, state standards an  
10 assessments. The English side of the  
11 proficiency assessment which have been under  
12 title three have not been subject to that  
13 requirement so basically it's actually up to  
14 states that provide assurances that there are  
15 high quality and so forth. The review of the  
16 ELP assessments could be integrated I think  
17 that's I don't know I don't mean to  
18 anticipate a solution that's part of why this  
19 question comes up is how does that play out  
20 within the current title one requirements  
21 given that these assessments are now part of

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1 title one. An additional quality situation  
2 is the use of English language proficiency  
3 assessment for the identification of English  
4 learners which is required by the loud  
5 remedies. The case was mentioned earlier of  
6 a situation in which home language surveys  
7 which really triggers the language  
8 proficiency assessment is used as the sole  
9 basis of identification and that would not be  
10 consistent with this requirement. They also  
11 need to be assessed using this or at an  
12 assessment actual assessment of English  
13 language proficiency. That's required under  
14 the loud remedies. It's also required that  
15 states established and implement after  
16 consultation with LEA's representing the  
17 geographic diversity of state standardized  
18 English learners. Exit and procedures must  
19 include a requirement all students that might  
20 be assessed within 30 days of enrollment  
21 within a school or within a state. This

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1 raises a question because in most cases and  
2 practice these assessments are used for that  
3 initial identification. Often there's some  
4 smaller version of it a screener of based on  
5 that test that those quality issues are  
6 impacted by the quality of the title three or  
7 the English language proficiency assessments.  
8 Thank you.

9 Ms. Podziba: Clarifying questions  
10 for Kenji?

11 Mr. Hager: The English language  
12 proficiency assessments are they now part of  
13 title one and are they subject to the peer  
14 review?

15 Mr. Rooney: I don't know if we are  
16 ready to answer that question.

17 That's fine.

18 Mr. Cheeks: You used the word  
19 correspond is that different than the  
20 standards and their alignment to the  
21 assessments the term alignment is used there

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1 without a reference to correspond that's  
2 different that that related to EL Standard.

3           Mr. Hakuta: The academic  
4 assessments -- English language proficiency  
5 standards also have tests that align to those  
6 standards, the relationship between the  
7 English language proficiency standards and  
8 academic standards so they are different.  
9 You know one of them is really about the  
10 content of the academics and what they  
11 represent. The language proficiency  
12 standards are really the language that's  
13 necessary to learn in and express  
14 understanding of it, so they are related but  
15 they are not aligned in that they are not the  
16 same thing.

17           Mr. Cheeks: Thank you.

18           Ms. Podziba: Any other clarifying  
19 questions?

20           Mr. Rooney: I think we are ready to  
21 go to the issue paper.

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1           Mr. Rooney: Thank you Kenji for that  
2 introduction. So stepping back just the  
3 English language proficiency tests which ELP  
4 for short are solely different than the  
5 content assessments that you have been  
6 speaking about for the last day and a half.  
7 This is test to see their level of language  
8 proficiency so that way they can make sure  
9 students can meet the standards of education  
10 in the school. It's not tied to a particular  
11 grade. It's something that states have for  
12 all English learners in their state. I want  
13 to separate that out a little bit. As Kenji  
14 mentioned generally or is required by law the  
15 ELP tests have to measure speaking, reading,  
16 writing and listening, there's four domains  
17 that are laid out in the ESSA. As Kenji  
18 mentioned this is something that's not a new  
19 requirement that states have ELP assessments  
20 in states that change that. This was  
21 something that was covered in around supports

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1 for English learners parts of it are in title  
2 three. The part of it having ELP tests which  
3 puts it in the same bucket of information as  
4 the state assessment. It makes for this  
5 conversation today. The one thing that we  
6 wanted to point out and particularly draw  
7 your attention to is laid out in the issue  
8 paper. If you look at the first paragraph  
9 where the statute says that the annual ELP  
10 assessment must be, sorry that requires that  
11 the state ensure that each school district in  
12 the state provide for an annual assessment in  
13 English language proficiency for all English  
14 learners. There's other sections of law that  
15 talk about the ELP test that specifically  
16 refer to that as a state or statewide ELP  
17 test which is why we think it may be helpful  
18 to clarify here whether that should be  
19 clarified in the regulation. The other thing  
20 to point out about this is a statewide ELP  
21 test is not something that is new. If you

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1 look at the appendix or the additional piece  
2 of information that's in your binder after  
3 issue paper 5B it provides a state membership  
4 in ELP assessment consortia. This is similar  
5 to for the alternate assessment that we  
6 talked about yesterday, and it had BLM that  
7 the states came together to design alternate  
8 assessments. We talked about yesterday two  
9 group of states that designed reading  
10 assessments and there were also two states  
11 that came together to assess ELP assessments.  
12 It covers 46 states if my math is right.  
13 Even before 2015-2016 when you have these  
14 states in one of the two groups of states.  
15 All states prior to this had a statewide ELP  
16 test they were using to measure the language  
17 proficiency of their students, so the content  
18 of that statewide ELP's is not a new concept.  
19 That's how states operationalized this. I  
20 think that's all I want to say that helps  
21 with the context and provides the appendix.

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1 With that we actually have two questions. We  
2 had draft language that we proposed on this  
3 one that might try to address the question.  
4 I will first start with the question. I will  
5 ask the first one. How can regulations  
6 related to ELP provide consistency and  
7 clarity that ELP assessments must be  
8 statewide?

9 Ms. Pompa: If you would put  
10 language in regulation around 3, what is it  
11 the assessing English proficiency that talked  
12 about the fact that this must be statewide?  
13 It would be very useful because I think it's  
14 not clear there. It's a statewide assessment  
15 that requires I think you pointed it out  
16 earlier. LEA's didn't talk about it. I think  
17 you have a lot of standing to do it as a  
18 regulation as you pointed out several places  
19 in the law that refer to statewide  
20 assessment. We know states will be required  
21 now to develop standardized entry, exit

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1 criteria which you can't do unless you have a  
2 statewide assessment. I think that would fix  
3 it that would help.

4 Ms. Podziba: Other comments or  
5 questions?

6 Ms. Jackson: I don't know if this is  
7 appropriate place that I would urge your  
8 consideration for it if this is not the  
9 appropriate place perhaps? Let me know if  
10 you have any ideas where it would be? We  
11 spoke earlier about the under representation  
12 of being identified with learning  
13 disabilities early on and then over  
14 representation later. I am wondering if it's  
15 possible to have advice or guidance around  
16 also assessing like sort of basic  
17 chronological retrieval, students abilities  
18 early on because whether they are in no  
19 matter what the language is you can do it  
20 with colors or objects. That would be fairly  
21 efficient way into incorporate with the other

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1 components of speaking, listening, reading  
2 and writing so that there's not a big gap in  
3 between identification of what is a language  
4 based issue and what is also compounded by  
5 something else. Does that make sense?

6 Mr. Rooney: I think I get your  
7 point. The interaction of title one and IDEA  
8 is it governs how we identifying students  
9 need services? I am happy to take that back  
10 and put a noodle on that. It may not be  
11 appropriate here.

12 Mr. Evers: I agree that the  
13 inconsistencies should be solved through  
14 regulation.

15 Yeah. (laughter)

16 Ms. Podziba: Make a note of that.

17 Ms. George: I'm sorry I have a  
18 clarifying question. I should have asked  
19 this during the background. I am sorry. How  
20 is interim progress usually measured in  
21 assessments and is there data collected about

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1 interim I guess improvement over time?

2           Mr. Hakuta: Currently under title  
3 three there are two ways in which progress is  
4 measured. One so this is what's referred to  
5 AMAO one and two. I can never remember what  
6 they dually stand for like annual measure of  
7 academic -- I think? AMAO one simply we got  
8 the reports the percentage of students who  
9 progress from one level to the next, so most  
10 assessments have five or six levels, and so  
11 it's a percentage of student who is move from  
12 one to two or three to four, et cetera. And  
13 states currently set those and you report the  
14 percentage at least they set targets and  
15 present those schools as targets. The other  
16 is percentage of students that obtain  
17 proficiency. This is going from what usually  
18 four or five on the overall assessment.

19           Mr. Rooney: One clarification on  
20 Kenji's point that AMAO is for the how they  
21 measured growth and districts for ELP

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1 assessments. The law changes that in the  
2 ESSA and I don't want to get into the weeds  
3 of that now, and actually AMAO district level  
4 information is no longer required under ESSA  
5 once ESSA is implemented, and actually  
6 because ELP tests are in title one it becomes  
7 a school measure. That's how it was done it  
8 will be slightly different under ESSA.

9 Thank you.

10 Mr. Chau: Did I hear this correctly  
11 about the ELP's before were not required to  
12 meet the same regulations that I mean in  
13 terms of the level of expectation that the  
14 new assessments require or required to meet  
15 now? I don't know if I said that right?

16 Mr. Rooney: To your question  
17 previously the ELP assessments under title  
18 three did not go through the same peer review  
19 process that the reading, language, arts  
20 assessments went through. I think you could  
21 probably read the ESSA to say or putting it

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1 in title one the same requirements to have a  
2 peer -- I don't know -- I am looking at my  
3 attorney to either kick me or say something  
4 else.

5 Ms. Rigling: The peer review  
6 requirements are not specific assessments,  
7 per se. They are specific to things included  
8 in the state plan both content assessments  
9 that we're talking about and English language  
10 proficiency assessments are both part of the  
11 state plan requirement. At the moment I  
12 don't think we have decided whether ELP  
13 assessments will go through the formal period  
14 of a process. It will have to be a different  
15 process because the requirements are  
16 different. That's to be determined.

17 Mr. Chau: Not all of the states are  
18 in part of this consortia including  
19 California. I am wondering what the  
20 simplifications for the states that are not  
21 part of these. I know in California they are

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1 in the process of developing a new assessment  
2 as well. I would hope that we are cognizant  
3 of that as we make any such changes.

4 Mr. Rooney: I would say you are  
5 predicting the second question that how might  
6 regulations fulfill the requirement under  
7 title one? I don't know if you want to hold  
8 that until we hear all on the first question?

9 Ms. Evangelista: I wanted to respond  
10 to what Ms. Jackson brought up. I guess  
11 because we are a high school I notice an over  
12 representation of students, so I will just  
13 caution if we are going to include something  
14 about assessing when you are assessing their  
15 English, and you are trying to also assess  
16 for other issues again because it goes to the  
17 other ELP's. It needs to be done in the  
18 native language. It's very difficult in the  
19 first year or two to really figure out what's  
20 happening unless you are assessing the  
21 student in their native language in terms of

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1 accessibility. There we have a lot of  
2 students that were given IEP's in middle  
3 school and we were able to move them away  
4 from accommodations because with time it was  
5 a language development issue not just a high  
6 school thing. I see a great number of  
7 students over represented in that.

8 Ms. Jackson: I want to clarify what  
9 I said probably wasn't appropriate or allowed  
10 by the reaction of people's faces. I was  
11 thinking about sort of in early years so  
12 maybe pre K through when we were trying to  
13 determine whether reading and language  
14 difficulties are results of sort of a  
15 neurological difference or simply an exposure  
16 and environmental difference in that place.  
17 I don't think we are doing enough to screen  
18 for kids. Any kid but phonological or and  
19 deficit screenings for those children in  
20 primary grades as they are being looked at.

21 Ms. Podziba: We are moving to

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1 question two is there a discussion of  
2 question two?

3 Ms. Pompa: So my answer to your  
4 question is that you must put English  
5 language proficiency assessment through a  
6 peer review process. There are a number of  
7 reasons the first is that as states are  
8 redeveloping their standards and making them  
9 more rigorous many of these assessments were  
10 developed to correspond with all standards  
11 and they need to be redone. I think from a  
12 practical point of view that the data exists  
13 and the willingness exists in the consortia  
14 to look at these and take these through a  
15 peer review process. I know states like  
16 California and Texas that aren't part of the  
17 consortia might take issue. I think even  
18 they have the resources to be able to do this  
19 and should do this. It's an important step  
20 again, I connect this with the new  
21 requirement that English language proficiency

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1 be included in the states accountability  
2 system, so you want to make sure that as  
3 states that you have the best developed test  
4 to be able to measure what's going on with  
5 the English proficiency. If it's going to be  
6 part of your accountability system never  
7 mind, now it's part of overall accountability  
8 it's very important. Related to that Kenji  
9 mentioned screen screeners and what states  
10 have done as many of you know is give a  
11 shortened version or sometimes a different  
12 version of the English language proficiency  
13 test when they first identify students. We  
14 need some regulatory language about how those  
15 screeners need to be aligned with the English  
16 language proficiency assessment and even put  
17 them through a peer review process also. I  
18 think that covers it.

19 Mr. Pohlman: So the question that I  
20 honestly am pretty agnostic about is the  
21 application of the peer review process or

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1 regulations to the ELP's. I think that right  
2 now some of the language we have in front of  
3 us we have been wondering if parts of the  
4 proposed regulation of 200. 2 (B) (2) around  
5 UDL both should apply or appropriate to  
6 apply. I would leave that to a question for  
7 Kenji and Martha if there are other  
8 components around 200.2 (B) (2) that we should  
9 also ask similar questions. Is there a  
10 difference psychometric process or validity  
11 process that should be separately codified  
12 for ELP's versus other state assessments I  
13 think is my general question. I am not  
14 entirely certain because this is not my area  
15 of expertise that these can be laid over one  
16 another. My other point is very technical.  
17 I believe the only place where UDL's  
18 mentioned in the law is actually under the  
19 assessments that the alternate assessments  
20 for students with the most significantly  
21 cognitively impaired students. I wonder if

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1 there's support in the actual text of the  
2 legislation to extend that to other  
3 assessments, and you know the assessment  
4 provisions we have here in our binders I am  
5 not sure I have all the information I need to  
6 answer that question. This is way more of an  
7 issue of clarify for me but not one  
8 principle. I think it should be very clear  
9 in the regulations what test apply to the  
10 ELP's and that should be supported in  
11 the -- I want to point out where there's  
12 conflicts there specifically in 200.2 (B) (2).

13 Ms. Harper: Bringing it becomes to  
14 our definition of EL's and understanding that  
15 folks who are impacted by native American  
16 language usage such as our students in native  
17 American language medium schools must be  
18 considered in here as EL's talking about ELP  
19 assessments now included in schools and  
20 accountability we would again request timely  
21 relevant consultation with tribes as required

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1 under the -- to this and all of our  
2 populations that are identified as Native  
3 American language students. That definition  
4 can be found in title three as we were  
5 saying. It has over lapsed because now this  
6 is affecting us in that area. So we would  
7 say we would require timely and relevant  
8 consultation with all of those stakeholder  
9 populations on ELPA's English language  
10 proficiency assessments are being played out.  
11 We would request a definition of American  
12 Indian on the forms that are used to identify  
13 our students. Then we would talk about a  
14 schedule. We talked earlier about academic  
15 language proficiency acquisition and the  
16 different time lines. Now realizing that  
17 effects our different populations in  
18 different ways. Kenji was speaking about  
19 that prior if you had a student who had been  
20 in an institutional educational period they  
21 are going to perform differently at different

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1 times into an English medium program. And  
2 again, Puerto Rico students in U.S. territory  
3 are Spanish, limited Spanish proficiency  
4 students they are given extensions from  
5 annual ELPA's and we would like to suggest  
6 that our native language medium students are  
7 given the same consideration, students in  
8 Puerto Rico use English language arts as a  
9 subject area. They use it as an extra  
10 academic assessment indicator and they are  
11 still taking it through the medium of  
12 Spanish. Their previous accountability  
13 workbook have been taking although it's until  
14 the law they are given an exemption where  
15 they are not taking an ELPA annually 3, 6, 8  
16 and 11 so again we would save you know, let's  
17 close up that discrimination gap with for our  
18 native American language medium students.

19 Ms. King: There's a bunch, 7  
20 different references to universal design,  
21 different places most of the time. It says

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1 all students including English learners and  
2 those with disabilities. I think the  
3 principle design generally applies. I don't  
4 know if there's a specific area that you are  
5 worried about? Somebody said yesterday this  
6 was sort of a problem right because we do use  
7 the language of universal design too often  
8 only when we are talking about children with  
9 disabilities, but the whole principle is it's  
10 supposed to apply to all students.

11 Mr. Pohlman: I am really agnostic.  
12 I am trying to go back to the text we don't  
13 have all of it here. I think my point to the  
14 extent is there's different things that we  
15 should be, these are two different types of  
16 assessments. They are measuring different  
17 things I am not overly familiar with the  
18 differences. I could assume there would be  
19 some. I want to make sure that we wouldn't  
20 inflate a requirement that was specifically  
21 outlined in the act for other types of

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1 assessments. To this one in particular  
2 that's a matter of protections. I get that.  
3 This is a matter that I don't want to  
4 complicate a process for high quality ELP  
5 assessments to be actually go through the  
6 process because of something we missed in a  
7 regulatory process in over applying the term.

8 Ms. King: I think you are right sort  
9 of. The other half of my comment would be to  
10 make sure part of the reason the peer review  
11 process is important is making assessments  
12 are all reliable for English learners with  
13 disabilities. Part of the process as much  
14 consistency in sort of assessment review  
15 processes as possible given that different  
16 assessments have different purposes after  
17 different students assessed.

18 Ms. Jackson: So I am lying in post  
19 lunch haze so if I miss this somewhere let me  
20 know. One concern I have and I'm not an EL  
21 expert. It would be for states now

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1 accountable for increasing proficiency levels  
2 to simply lower the bar on what it takes to  
3 be proficient, so I would be curious what  
4 measures are guardrails is a popular term  
5 being used could be put in place for states  
6 to be accountable for the subgroup for EL's  
7 not proficient and each after they reach  
8 proficiency perhaps in disaggregated and all  
9 together. They continue to be accountable  
10 for ensuring proper supports in place whether  
11 they have exited official status or not. I  
12 will leave it at that.

13           Mr. Payment: I have a clarifying  
14 question, so on another national committee I  
15 was on there was a presumption by the agency  
16 that what they were doing by meeting with the  
17 subset of tribal leaders across the country  
18 they were fulfilling the consultation  
19 requirement under the federal government, so  
20 the consultation requirement flows from the  
21 President's executive order that specifically

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1 stipulates that when there are effects in  
2 Indian country that any proposed rules,  
3 regulations and interpretations under the  
4 Department effect Indian country that it go  
5 out to consultation. That's a very specific  
6 thing under the President's directive. Then  
7 also I have a copy of the Department of  
8 education consultation policy and it looks  
9 like, it looks like as we move forward and we  
10 have something concrete to propose that is  
11 required as well for the 30 days' notice out  
12 to tribal Indian country to individual  
13 tribes, and so I guess I would like a  
14 clarification of negotiated rule making as it  
15 relates to the consultation policy, and then  
16 also as an elected tribal nation of my nation  
17 I would like to request that consultation.

18           Mr. Rooney: I don't think we have an  
19 answer to that right now. We will figure out  
20 how to respond to that.

21           Ms. Evangelista: I have a comment or

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1 question that goes with it. I just want to  
2 remind everybody EL's are the most tested  
3 group because they are required to take the  
4 regular English assessment after 12 months,  
5 math assessment and science in high school,  
6 and then these English proficiency tests  
7 every year which is a tremendous task I think  
8 for schools to implement. It takes away a  
9 lot of instructional time, quality  
10 instructional time for students. I wonder if  
11 there has been any discussion? I know that  
12 has been the case for us because while the  
13 English test and the proficiency tests are  
14 testing two different things. I think most  
15 of us would agree that you know you couldn't  
16 really pass the regular English assessment  
17 without being able to prove English  
18 proficiency. I wonder if it clarifies things  
19 in some states or if this is beyond the  
20 regulation I don't know? In some states  
21 there is the ability because students, this

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1 has happened to us over and over again where  
2 a student did pass the regular English  
3 assessment but didn't, wasn't able to test  
4 out of the proficiency test. Part of that  
5 was quality of the testing and all of that.  
6 Is there anything or is that something that  
7 could be part of the regulation or is it  
8 beyond the scope?

9           Mr. Rooney: I think we would like  
10 to hear more from other people in the  
11 conversation. I don't think we have an  
12 answer to that question.

13           Ms. Pompa: I personally think right  
14 now it's beyond the scope. I do know that  
15 the technology of assessments is developing  
16 rapidly and there are researchers that are  
17 working and Kenji can speak to this more.  
18 They are working on integrating the two kinds  
19 of assessments that you would be able to do  
20 that. I don't think we are quite there yet?  
21 Do you want to comment?

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1           Mr. Hakuta: I think that's  
2 absolutely right. Especially if the academic  
3 assessments include more and more demands of  
4 student language they are able to pick up on  
5 those things, but we are not quite there yet  
6 but I think that idea has been out in the  
7 field.

8           Ms. Podziba: Patrick, do you want to  
9 introduce the regulatory language?

10          Mr. Rooney: That would be great. To  
11 remind you it's been awhile since we looked  
12 at the last few issue papers. We did not  
13 have proposed language. From Rich's point  
14 earlier I think we will get to his comment at  
15 the bottom of this page. The text in black  
16 is our current regulations the text in blue  
17 is language that we are taking from the new  
18 law from ESSA and then the next in red is  
19 where we have proposed clarifications for  
20 your considerations for the discussion of  
21 what the regs may include to make it clearer.

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1 So the first section under three is actually  
2 a lot of the text is when NCLB went into the  
3 line there was a time where states had ELP  
4 assessments since that's not relevant we  
5 struck through that part of the text. It  
6 makes it hard to read. I apologize to that  
7 each state must and then under A develop  
8 uniformed statewide assessment of English  
9 language proficiency including, reading,  
10 writing, speaking and listening skills. We  
11 have added that piece. It sounded like  
12 there's general agreement to keep that so I  
13 will keep moving. B require each ELA to use  
14 such assessment to assess annually the  
15 English language proficiency, including  
16 reading, writing and speaking skills, of all  
17 students served by the LEA. I think mostly  
18 that is from the statute. A few changes  
19 instead of calling students limited English  
20 proficient we are now term English learners  
21 that's the change there in B. Moving on when

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1 they first developed ELP assessments there  
2 was a clause in here that permitted the  
3 secretary to give states additional time if  
4 there wasn't a particular reason for that to  
5 happen you can see in the paragraph language  
6 that it was a natural disaster or a person  
7 declined of natural resources since we are  
8 past that point. I will comply under NCLB  
9 and now under ESSA it seemed irrelevant.  
10 Roman numeral II and Roman numeral two the  
11 assessments under paragraph three I in the  
12 section which is the above piece we just  
13 mentioned must be A aligned with the states  
14 English language proficiency standards under  
15 1111 (B) (1) (f) of the act and that is from  
16 the statute where it particularly references  
17 the requirement to have an English language  
18 proficiency assessment and provide coherent  
19 and timely information about each students of  
20 those standards. We added that clarification  
21 and (B) developed and used consistent with

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1 the requirements of section 200.2 (B (2) and  
2 (b) (4) and 200.2 (B) (5) this is where we  
3 get into cross references. Let me explain  
4 the references. If you skip ahead to issue  
5 paper six you can see what this language is.  
6 B (2) is talking that the assessments be  
7 valid, reliable and accessible. This is also  
8 where it will include references to universal  
9 design for learning, so in this section we  
10 are saying that the ELP assessments need to  
11 meet those requirements to have valid and  
12 reliable results. Let me see if we can find  
13 the page. If you were to look on issue paper  
14 six. 200.2. It's on the bottom of page one  
15 thank you. Top of page two. So design valid  
16 and accessible for use of all students. It  
17 talks in the next piece about universal  
18 design for learning. I think rich is correct  
19 that the statute references UDL in response  
20 to the content assessments reading, language,  
21 arts and math and science does not reference

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1 in respect to ELP's assessments. I will flag  
2 that for you as Rich's point. Then if you  
3 look further on before is page 3 and towards  
4 the bottom again, about being invalid and  
5 reliable for the purpose of assessment system  
6 and the five is right below that and that's  
7 the system be supported by evidence with  
8 adequate technical quality consistent with  
9 the requirement of the act be made available  
10 to the public. We will talk about six in a  
11 little bit. Those are taking things in from  
12 the ESSA and the statute. I will stop there  
13 and see if people have questions about the  
14 language on 200.6.

15 Ms. Rigling: Maybe this is stating  
16 the obvious, but I just wanted to point out  
17 that this is one of the areas that the  
18 regulations I think are useful. If you look  
19 at 3 romanette one developed the uniform  
20 statewide assessment system including  
21 reading, writing, speaking and listening if

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1 you look at a part of the statute that talks  
2 about establishing an English language  
3 proficiency assessment. It doesn't include  
4 those words. Those words come from the cross  
5 reference to English language proficiency  
6 standards. So the cross reference is in the  
7 assessment provision and we thought it was  
8 helpful to pull out what those content areas  
9 of those standards have to cover to make it  
10 clear that in fact that's what the English  
11 language proficiency assessment needs to  
12 cover also, so that's an area where it's all  
13 from the statute, but it's from two different  
14 places in the statute.

15 Ms. Pompa: I would like to go back  
16 to the requirement that the assessments be  
17 put through a peer review process. Did you  
18 not include that because you weren't sure you  
19 wanted to do that as a Department or would it  
20 be elsewhere outside this section?

21 Ms. Rigling: I am not sure if we did

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1 it for content assessment? I don't know that  
2 we have that specifically in the regulation/

3 Ms. Pompa: For content assessments,  
4 it's not law?

5 Ms. Rigling: The law tells us to  
6 peer review, set up a peer review system to  
7 assist the secretary in reviewing state  
8 plans. Content assessments are part of the  
9 state plan. That's where we picked up  
10 reviewing content assessments through a peer  
11 review process. I don't think that we had  
12 that in the regulations under NCLB and I mean  
13 maybe we should. It's been like you said  
14 it's been in the law so that's how we applied  
15 it.

16 My guess is someone advocating for  
17 that to happen. What I would say is the fact  
18 that you didn't do it for content assessment  
19 might not apply because they're a reality.  
20 The fact they are not a reality yet for the  
21 English language proficiency assessments

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1 would lead me to believe that would happen if  
2 we had a regulation for it and I recommend  
3 it.

4 Mr. Evers: I support the regulations  
5 as written.

6 Ms. Podziba: Minimalist.

7 Mr. Hager: Yours is too quiet this  
8 is too loud. For clarification because you  
9 have 200.2 in this regulation which talks  
10 about the students with disabilities and even  
11 though they explicitly say 200.6 it's kind of  
12 implicit is that how you are interpreting  
13 this? When you in your proposed language you  
14 refer to 200.2 which talks about reliable and  
15 accessible for students with disabilities and  
16 English learners then you have 200.6 which is  
17 more explicit about what that means. I think  
18 earlier on you did have an explicit to 200.6  
19 200.2 -- I don't know if we want to add 200.6  
20 to your proposed regulation to be consistent  
21 where we put it in other places. It's more

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1 of a question I guess.

2 Mr. Rooney: I think maybe we should  
3 hear from others on that question?

4 Ms. Podziba: Do you want to be  
5 explicit on 200.6?

6 Mr. Hager: That's where the  
7 accessibility requirements are. That's what  
8 we were looking at yesterday. I am pretty  
9 sure we talked about in the general  
10 assessments we added 200.2 and 200.6 I think  
11 we should be consistent and put it in here as  
12 well that's my proposal.

13 Ms. Pin Ahrens: I want to state that  
14 I do agree with the recommendation to require  
15 peer review process for ELP assessments just  
16 to make them more rigorous and incorporate  
17 the values of fairness and validity and  
18 Reliability. I agree adding 200.6 to the  
19 recommendation as recommended. I would like  
20 to amend the piece or add onto the piece it's  
21 been recommended to have, provide coherent

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1 and timely information about each student's  
2 attainment of the standards to also include  
3 how that impacts each student's  
4 reclassification according to the state  
5 criteria. Also, how students compare to  
6 other English learners at that grade level,  
7 and include information on how to look at  
8 cross-populated data which would be  
9 available. I would also like to add in that  
10 this information should be conveyed in the  
11 culturally and linguistically appropriate  
12 manner to participants and family. Thank  
13 you.

14           Mr. Payment: So I am trying to  
15 wrestle with understanding why we wouldn't  
16 have peer review, and then I do have concerns  
17 with it because I am, I chair the national  
18 institute of health travel consultation  
19 advisory council. We have concerns with peer  
20 review and that our peers are usually not  
21 part of the peer review. There's a cultural

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1 lack of knowledge and understanding when they  
2 are reading grant proposals and who we are  
3 and our Identity and all of that. However  
4 taking that hat off and just looking at it as  
5 an academic the standard for determining  
6 validity, reliability and fairness would be  
7 through peer review and so that is the  
8 standard in academia. I think that is the  
9 only objective way that you can come up with  
10 it. Otherwise an agency writes it and it's  
11 not subject to peer review. Maybe we need to  
12 talk about that for a second or understand  
13 that is how you arrive at validity and  
14 reliability is subjecting your science to  
15 others that are experts in that area to be  
16 able to pick it apart and find weaknesses and  
17 determine that it's valid. So I am not sure  
18 why we are debating that part unless there's  
19 some deeper issue that I don't understand?

20 Mr. Pohlman: Can I ask a follow up  
21 question about the inclusion of 200.6? Are

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1 there specific provisions within you know  
2 200.6 it is very long. Are there specific  
3 elements that you feel like are more germane  
4 to the inclusion than others? I am just some  
5 of this is school level responsibilities and  
6 other things I am just wondering if that's  
7 near at all if you are just seeking for the  
8 Department to go become and kind of looking  
9 at elements of 200.6. It's a finer tip to  
10 put on that. Do you want a minute to think  
11 about that?

12 Mr. Hager: We don't need to consider  
13 provisions based on the alternate  
14 assessments, oh we do? Okay. I will defer.

15 Ms. Thurlow: The question is whether  
16 we need alternate assessments for the  
17 students with the most cognitive disables. I  
18 think there's a recognition in the general  
19 assessment that all of those students work  
20 with same standards they demonstrate their  
21 proficiency and achievement in a different

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1 way that's the alternate achievement  
2 standards. I think if you talk to experts in  
3 the area of severe cognitive disabilities,  
4 the students we're talking about they will  
5 also indicate that their English  
6 proficiencies if they are an English learner  
7 or not will not be exactly the same as a  
8 student without a significant cognitive  
9 disability. It's an area of research going  
10 on right now. If you want to talk about  
11 whether just to eliminate them from having an  
12 assessment that measures them against  
13 alternate performance standards.

14 Mr. Ahart: I wonder if we might wait  
15 until we get to question 6 about what to and  
16 not to include and all of this revised  
17 language is that all right? I mean there's  
18 elements in here that are fine and some I  
19 think warrant some further discussion.

20 Mr. Rooney: We don't need the -- I  
21 am open to things that we would want to

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1 include or not include. If there's other  
2 things that people want to raise before we  
3 move onto raise on this before we move onto  
4 paper six.

5 Ms. King: I want to make sure we are  
6 providing accommodations we need to be  
7 providing so that all students are -- it so  
8 hard to get advice in real-time. All  
9 students are able to participate in ELP. I  
10 don't think any of us want to be in a  
11 scenario where a child is un-accessible. We  
12 have accommodations to make sure we are  
13 getting valid and reliable accommodations. I  
14 am cool with Thomas suggestion that we sort  
15 of take this as a bucketed whole and move on.  
16 I wanted to make sure that we are attending  
17 to that.

18 Ms. Briggs: I am going to comment on  
19 Rita that you can reference to 200.8 which is  
20 the text about student reports.

21 Ms. Podziba: Is there anything else

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1 to add to the Department on this language?

2 The Department will take this back and

3 consider the suggestions that have been made?

4 Mr. Rooney: Yes and to Thomas' point

5 there maybe questions that come up that will

6 help when we get into issue paper six that we

7 can figure out how to properly word this if

8 you can help us with that that would be

9 great.

10 Ms. Podziba: Any other issues with 5

11 B? Let's move onto issue six.

12 Mr. Rooney: The result of this is

13 wonderful. We have a little bit longer.

14 Issue paper six is potentially very long if

15 you started reading ahead. We could spend a

16 lot of time on this although we can talk

17 about whether how the best use of our time

18 talking about this. I mentioned yesterday, I

19 mentioned on Monday afternoon that when we do

20 these assessments that our original thinking

21 when we were trying to figure out what to

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1 bring forward for discussion was that we  
2 would start with the existing regulations  
3 since there are extensive regulations and  
4 many of the requirements about state  
5 assessment systems have not changed from NCLB  
6 to ESSA. That we could use the existing  
7 regulations as our founding point and then  
8 build from there where the language and the  
9 new law is different than the language in the  
10 old law where something additional has been  
11 added. I think that the last day and a half  
12 when we have been talking about the different  
13 issue papers is where we focus our time and  
14 attention on the aspects of the law that are  
15 particularly new or different or unique and  
16 didn't exist under NCLB. We wanted to have  
17 conversation about each of those pieces  
18 before we can figure out the best way to get  
19 all of your feedback and advice. Issue paper  
20 six is where we did try to update the  
21 existing regulations with what is in the new

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1 statute in the new law, so I will start by  
2 just this is not all of the regulations you  
3 actually have the full current regulations  
4 back in tab C which covers all of the  
5 assessment regulations as they are currently.  
6 This section should be for six just take a  
7 couple of the more substantive sections of  
8 current regulations and updates them with the  
9 new statutory language. So all of the text  
10 that's in black is the text that is the  
11 current regulations and then where something  
12 is eliminated we cross it out in red, and  
13 where something has been added we added it  
14 using changes so it's underlined for you to  
15 see the difference. I think it may be  
16 helpful to start going through this. I can  
17 flag a few things and I don't know if we want  
18 to read through it line by line.

19 Ms. Podziba: Just a question is the  
20 red text on this reg text is the red text on  
21 this regulatory text essentially would be

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1 blue in the way the other papers were  
2 prepared?

3           Mr. Rooney: Yes that's correct. I  
4 will give you a few examples. I can point  
5 out something that I will try to set the  
6 context for you 200.2 (5) (1). We crossed out  
7 the phrase beginning in the 2007-8 school  
8 year because again as I mentioned a little  
9 while ago these regulations were from 2002  
10 and at that time when NCLB was passed there  
11 was a time Line from when assessments had to  
12 be phased in and science assessments weren't  
13 required until 2007. Since we are past that  
14 it seemed no longer relevant. If you looked  
15 on 200.2 (A) (I) you see how we changed our  
16 language? So in the old regulations we said  
17 that the state has adopted challenging  
18 academic content and student academic  
19 achievement standards. The language in the  
20 new statute in the ESSA references content  
21 and achievement standards and combined them

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1 into one as the challenging state academic  
2 standards. Throughout our regulation we  
3 tried to change where we referenced content  
4 and achievement standards and just say  
5 challenging state academic standards which  
6 encompasses both these things. I am trying  
7 to think there is if I can find an example of  
8 the computer adapted testing. If you look on  
9 page six on the bottom half of the page  
10 number two we talked about a computer adapted  
11 assessment, so I will try not to -- I will  
12 try to explain this as good as I can. The  
13 text that's here is the statutory text from  
14 the statute around computer adapted  
15 assessment. It does not include the text if  
16 you went back and looked at issue paper one  
17 there's some language we proposed adding in  
18 red. That language is not here. This is  
19 just the language from issue paper one that  
20 is blue. Here it's red. This is what it  
21 says about computer adapted assessments (II)

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1 and then three, but actually in issue paper  
2 one that 7 becomes proposed number four and  
3 that is proposed number three is that clear?

4 (laughter)

5 Ms. Podziba: Is everyone following  
6 that? I just want to get do people are -- I  
7 mean it's complicated. Try to imagine this  
8 red text being blue. Then it could be  
9 consistent with the other issue papers, so  
10 what Patrick is pointing to is that for  
11 computer adaptive testing the red text in  
12 issue six is paper is the blue text in issue  
13 one's paper.

14 Mr. Rooney: That's right.

15 Ms. King: So the red text from the  
16 other sections is not in here at all? Your  
17 additional proposed language isn't? You are  
18 faithfully transferring statutory language  
19 into the red text?

20 Mr. Rooney: Yes, correct. That our  
21 hope is imagine this is blue and we would add

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1 some of the text based on this discussion  
2 which might make sense in discussion for  
3 session two.

4 Ms. Jackson: If you need help with  
5 coding, coding. I wanted to double check on  
6 page two at the top (II) I am pretty sure the  
7 universal design for learning is the --

8 You flagged for us yesterday going  
9 back to page two we have the term universal  
10 design in quotation Universal Design for  
11 Learning. We haven't had a chance to discuss  
12 that but we think you are right as far as I  
13 know.

14 Ms. Rigling: The only typo on the  
15 document.

16 Ms. Briggs: I am just wondering in  
17 terms of a process of helping us move through  
18 this if when suggestion might be to focus our  
19 time on those places where we haven't already  
20 spent a lot of time discussing the issue in  
21 depth. I might be hard just on the computer

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1 adaptive thing you mentioned trying to flip  
2 back from the section and the issue paper.  
3 Maybe we can assume that you got all of that  
4 great information and it will be here next  
5 time and we can talk about the new stuff.  
6 It's just a process suggestion.

7 Ms. Podziba: There's also a question  
8 and I don't know if people are ready to do  
9 this? If there's some of this is lifted  
10 straight out of the statute and so the  
11 assumption is that doesn't need to be  
12 discussed because it's the law already. Some  
13 of this may seem slightly interpretive to  
14 people when it's not precisely statutory  
15 language so there's a question, are people  
16 wanting to flag that and perhaps have  
17 discussions about those items if there are  
18 any?

19 Mr. Rooney: Sorry, I'm trying to  
20 think about the suggestion the best way to  
21 handle it. Do you want us to do that now and

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1 walk through things and I don't think it's  
2 quite fair to ask you to identify things that  
3 you want to flag for us that maybe there's  
4 some areas that you could flag the majority  
5 of it is a long document I realize. It's  
6 pretty technical. If there's people that  
7 have suggestion there's a couple of things  
8 that I would flag for you guys to just make  
9 you aware of or discuss or walk through with  
10 you. A lot of it I might propose to not do  
11 that.

12 Ms. Pompa: Perhaps I misunderstood?  
13 I thought everything was from the statute?  
14 Why are we arguing interpretation?

15 Mr. Rooney: I can give you an  
16 example of a thing that I would like you to  
17 walk through to see the reference some of  
18 this is going to be the cross referencing of  
19 different aspects of either the new law or  
20 other regulations that where we put things  
21 mainly. It may not be intuitive to why we do

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1 that therefore you may have a question for  
2 us. Sometimes it's in 1111 (B) (2) (I) and  
3 we have in 200.2 and in something else we  
4 have that's similar to the law, but we put it  
5 in a different section of the regulations  
6 that you may be looking for it somewhere and  
7 not seeing it where you within the to see it.  
8 Let me give you an example. If you go back  
9 to page one of the draft red text go down a  
10 little bit past the half way mark under the  
11 letter B, so it says the assessments required  
12 under the section must and then number one I  
13 is accept as provided in 200.2 of C in  
14 sections 1111 (B) (2) (C) and 1111 (B) (2)  
15 (H) and -- 12 of the act. To clarify with a  
16 we are saying in this section of the  
17 regulations is that the assessments must be  
18 the same for all students except for those  
19 students who are taking an alternate  
20 assessment based on alternate achievement  
21 standards for the most significant cognitive

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1 disabilities. 112 C is the section for eighth  
2 graders taking advanced math courses. 11  
3 (B) (2) (H) are for students who are in a  
4 locally selected in additionalized test.  
5 They are taking that test now permitted under  
6 the law. Section 1204 of the act we have not  
7 discussed at all. It's been eluded to once  
8 or twice is a pilot authority that the  
9 Department has to permit up to 7 states to  
10 create an innovative demonstration assessment  
11 and accountability system that they could try  
12 out if you look at different ways to do  
13 assessments. Make things as confusing as  
14 possible. All students that should be taking  
15 the same assessment there's a couple pieces  
16 it could be the case that will be taken  
17 different assessments and that's where the  
18 exception is noted here.

19 Ms. Podziba: Do you want to keep  
20 going I think it's helpful. It sounds like  
21 what you are doing you are going to walk

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1 through you are not going to go through every  
2 line. Particularly when it's just straight  
3 out of the statute. Ms. Jackson do you have  
4 a question?

5 No.

6 Mr. Payment: This actually is kind  
7 of a good segway for our next session. I  
8 think we will be getting more into actually  
9 the draft language would look like. We can  
10 kind of practice out to see how this is going  
11 to work. If we believe we need to come up  
12 with protocols for parking things and getting  
13 through stuff that we don't have any issues  
14 with and then come back to the issues that we  
15 have parked and then get into the deeper  
16 conversations, but I am a firm believer in  
17 working through what we can get through and  
18 come back to stuff is sticking points.

19 Ms. Podziba: Me too.

20 Mr. Rooney: So there's various  
21 locations that I wanted us to go on to. The

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1 next piece would be on page two. Hopefully,  
2 there's pieces we can get to faster. Roman  
3 numeral II the first at the top where you  
4 develop the extent practicable, using the  
5 principles for universal design for learning.  
6 We talked about this yesterday in the law  
7 there is a reference in the definitions which  
8 is the back of the law where they defined  
9 universal design for learning the higher  
10 education act which is a different law. This  
11 definition here is that definition so we  
12 talked about adding that into the regulations  
13 to be clear so it's in one spot so that is  
14 where we done a little bit of gymnastic, but  
15 it's not an interpretation or anything  
16 different it's following the chain and  
17 putting it together so that way the  
18 regulations can be a little bit more coherent  
19 for the states an all of you in the field.

20 Mr. Payment: So maybe what would be  
21 helpful to get to the consensus toward the

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1 end is that so earlier we are going to end up  
2 in some disagreement somewhere down the road  
3 what's regulatory and what's guidance. Maybe  
4 as we go through we try to begin to identify  
5 a standard that we think something should be  
6 regulatory versus something that should be in  
7 guidance because then when we get to the more  
8 difficult stuff we have already worked  
9 through conceptually what's regulatory versus  
10 guidance.

11 Ms. Podziba: Thanks.

12 Mr. Payment: I think that's great  
13 and also I think what may happen as we go  
14 through this document is that some of the  
15 items that people were hoping for were -- it  
16 was suggested that some of those things were  
17 already in the statute. So if people can  
18 also flag what's already here that people  
19 were hoping for that might also move us  
20 through it more quickly when we come to the  
21 actual regulatory text.

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1           Mr. Rooney: So then moving on  
2 further down this page. We get to 3 (A) and  
3 (1) and (2) that this is looking at the  
4 assessments under this section must be  
5 aligned to the challenging state standards of  
6 A one and two depth and breadth of those  
7 standards that actually is taken from our  
8 current regulations, but it was moved from a  
9 different section of our current regulations  
10 into here and make it clear what the state  
11 assessments would be in these requirements.  
12 It's something that's in the current  
13 regulations since 2002, but was in different  
14 components. I am flagging that as slightly  
15 different than statutory update. And then  
16 under B kind of following through to number  
17 two I think actually the top of page 3 this  
18 is where we clarify that for alternate  
19 assessments for students with the most  
20 significant cognitive disabilities, is the  
21 assessments need to measure student

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1 performance based on the alternate academic  
2 achievement standards defined by the state in  
3 consistent with 1111 (B) (1) of the statute.  
4 That's where it gives the authority for  
5 states to create alternate achievement  
6 standards to ensure that a student that meets  
7 the alternate academic achievement standards  
8 both secondary -- public law 93-112 as in  
9 effect of July -- 2013. That quote I  
10 apologize for it being a little bit opaque.  
11 It's a direct quote from the statute in 1111  
12 (E) (1)(E) which is again where the law  
13 provides the authority for states to be  
14 developed alternate achievement standards  
15 provided that they meet this section and we  
16 have repeated on regulations and the public  
17 law 93-112 is the rehab act. That is that  
18 quote in July 14, 2014 is in the statute  
19 itself is putting a time stamp of the version  
20 of the law that should be used for title one  
21 (F) ESSA purposes.

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1 Ms. Briggs: I think the capitol  
2 letter E is supposed to be capitol letter D?

3 1111 B one?

4 This is where I get really impressed  
5 chapter and verse.

6 Ms. Rigling: The cross reference is  
7 correct because it's two alternate academic  
8 achievement standards for students with the  
9 most significant cognitive disabilities as  
10 opposed to 2 d two which is assessments.

11 Mr. Hager: I have another related  
12 one.

13 Ms. Podziba: Let's let Patrick keep  
14 going.

15 Mr. Rooney: Looking at the bottom of  
16 page three.

17 Ms. Podziba: Ron has a question on  
18 romanette 2.

19 Mr. Hager: This has to do with a  
20 conversation yesterday regarding this what  
21 the grade level means, and I don't think we

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1 want people that will taking the alternative  
2 assessment to be showing proficiency on the  
3 grade level. We want to be showing  
4 proficiency on their standard which is  
5 aligned with the grade level.

6 Ms. Rigling: I don't think this  
7 meant to cover alternate.

8 Mr. Rooney: Romanette two the way  
9 you look at the indented it actually is a  
10 subset of 3 if you go back to page two, so (3  
11 (i) all assessments must be aligned with the  
12 academic standards and to provide timely  
13 information and all of the A's and B's and  
14 the C's that went through the alternate  
15 achievement standards. Now we are on 3  
16 romanette two.

17 Mr. Hager: This is meant to be  
18 separate from the alternate achievement

19 Ms. Podziba: Sometimes it's hard to  
20 track what goes to what.

21 Mr. Rooney: There's a part to that.

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1 You will appreciate that the indenting and  
2 format is a little hard to follow.

3 Mr. Hager: It's really three double  
4 I is that what that is? Thank you. Others  
5 were confused about that, too.

6 Mr. Rooney: I imagine. Sometimes I  
7 have to go back and figure out where I am at.

8 Ms. Rigling: I think of reg writing  
9 as an outline. So you start with a section  
10 number so that 200.2, and then you have  
11 paragraphs and those are little ABC and D  
12 those should all be equivalent and under that  
13 are numbers one, two, three, four, five, and  
14 under Arabic number are romanette numbers  
15 romanette one and little Roman one, Roman  
16 two, and Roman three and then you get to  
17 capitol A and capitol B and C. In the case  
18 at the bottom of the page two and top of page  
19 three those B one an B two are actually when  
20 you see it in the federal register those will  
21 be underlined when they are in the code of

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1 federal regulations they will be italicized.

2 It's sort of this idea that there's this

3 progression. It's hard to see it here but

4 that's why the romanette two becomes an

5 equivalent to romanette one under three.

6 It's not a subsection under the two which

7 will be underlined that's actually above it.

8 Just want to remind you of all the

9 confusion involved in the translations back

10 and forth it's kind of ironic.

11 (laughter).

12 Mr. Rooney: You may want to provide

13 a primer or a guide that might be a little

14 helpful on how they indent.

15 It won't be indented either every

16 number romanette is indented just five

17 spaces.

18 Ms. Podziba: We will do our best.

19 Thank you.

20 Mr. Rooney: Moving on. I think I

21 pointed out on the bottom of page three on

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1 number five this is a change in the statute  
2 under NCLB that a state assessment systems,  
3 states had to demonstrate that they were  
4 supported by evidence which the secretary  
5 will provide upon request consistent with the  
6 applicable government laws and exposure from  
7 the test publishers that was essentially  
8 saying states had to demonstrate and the  
9 secretary had to make that available. That  
10 part has been changed, and in the new law in  
11 the ESSA it's changed to what's on page six.  
12 You look at the new little Roman numeral (II)  
13 and Roman number two. It's on the state's  
14 website. There's a slight change to put it  
15 onto the states website to make that  
16 information available. I don't know if we  
17 need to spend a lot of time on four and five.  
18 There's a little bit of reorganization. The  
19 language hasn't changed much at all from how  
20 that assessment that they could have a single  
21 or multiple assessment or over multiple times

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1 during the year. The organizational purposes  
2 as much as anything else deleted what shows  
3 up in the middle of page four about single or  
4 multiple question formats and partially  
5 developed in and added in that they conclude  
6 and that they partially deliberate in the  
7 proposed projects or suspended performance  
8 passed.

9 Ms. Jackson: For the measures of  
10 growth is there a place where that's defined  
11 of what's an acceptable significant measure  
12 of growth?

13 Mr. Rooney: No. The statute does  
14 not define that. It leaves that to the  
15 discretion of states.

16 Ms. Jackson: They are required to do  
17 it?

18 Mr. Rooney: If you look at number 7  
19 it states assessment systems they multiple  
20 measures achievement measures that assess  
21 higher than thinking skills and understanding

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1 of challenging content as defined by the  
2 state. These measures may include measures  
3 and maybe partially delivered in portfolios  
4 for extended tasks. It's permissive not  
5 required.

6 Ms. Jackson: For the area where it  
7 said that growth could be considered not as a  
8 replacement for academic achievement for  
9 accountability but both could be incorporate.  
10 Would the state need to define how they are  
11 defining growth? Personally this is in my, I  
12 find a lot of frustration where people want  
13 everyone above in terms of student growth  
14 percentiles we want everyone above 50 percent  
15 growth percentile which is just  
16 mathematically impossible. I would in that  
17 area in the reference area I said before  
18 having some clear definition would be really  
19 helpful.

20 Mr. Rooney: Let me make sure I  
21 understand the question. Are you encouraging

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1 the regulations to define what is sufficient  
2 growth?

3 Ms. Jackson: Sorry. I would want --  
4 I am forgetting what section it is in where  
5 it said growth could be -- I don't know does  
6 anybody remember? It could be one of the  
7 measures that you could include.

8 Mr. Rooney: We talked about it under  
9 adaptive testing. I feel like it came up  
10 earlier as well.

11 Ms. Jackson: If the state were to  
12 define how they are measuring their growth  
13 that would be useful. If I am getting too  
14 tangential that's fine.

15 Mr. Rooney: So you are going to  
16 define it not that the regulation should  
17 define it? The regulation should say states  
18 should define.

19 Ms. King: Yeah. If you are talking  
20 about growth as a measure in the context of  
21 the accountability system then there's a

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1 whole other bucket of things including some  
2 prohibitions on the secretary's authority to  
3 regulate. The transparency about individual  
4 indicators and the accountability system if  
5 where you are concerned is that if growth is  
6 incorporated in the accountability system how  
7 do you know what that looks like? The answer  
8 is that's in the other planned requirements  
9 around the governing requirements.

10 Thank you.

11 Mr. Hager: In terms of the other  
12 part of 7 involved update of student academic  
13 achievement that was in black does that mean  
14 it was from the NCLB regs? Is that totally  
15 consistent with the ESSA provision now?

16 Mr. Rooney: Yes, it means it's from  
17 our existing regulations and we believe it is  
18 consistent with the current statute.

19 Ms. King: The earlier reference for  
20 11312, if there were words there so that  
21 people knew that meant we want --

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1           -- it actually means the  
2 rehabilitation act of 1973 as then --

3           Ms. King: -- that seems even better  
4 words to use. Work force innovation and  
5 opportunity act.

6           Mr. Rooney: Moving onto five and  
7 it's in the statute at the states discretion  
8 the state can have a single assessment or  
9 multiple statewide interim assessment during  
10 the course of the year that provides valid  
11 and reliable transparent information on  
12 student achievement and at the states  
13 discretion student growth consistent of be  
14 four two of this section which references  
15 back to the requirement that is the  
16 assessments be valid and reliable for the  
17 purposes they are being used, and then  
18 further in are -- five, we changed the word  
19 students to children and we talked about this  
20 a little bit yesterday not in this context,  
21 but in the definition of kids with

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1 disabilities that this is specifically  
2 referring to children with disabilities as  
3 defined under IDEA subsection 603 under IDEA  
4 and that's where they define the different  
5 categories. And they use children with  
6 disabilities that's why we changed it within  
7 our regulation to be consistent with IDEA.

8 Ms. Jackson: Just above the double I  
9 multiple statement that general area. I  
10 guess I want to note that I know it says  
11 transparent information that this one score  
12 on what is representing student achievement  
13 may have note of limitations in terms of I  
14 don't know, like in terms of that being the  
15 one definitive way to rate students. I am  
16 totally stinking at being clear my brain has  
17 hit the wall. I am saying with all of this  
18 testing which I am fine with testing, but we  
19 sometimes over simplify our interpretation of  
20 what a score or a status may mean about our  
21 child's achievement or accomplishment the

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1 Ms. Podziba: Is this statutory and  
2 so not changeable?

3 Mr. Rooney: I believe it's statutory  
4 language. This is directly and includes  
5 actually that provides reliable transparent  
6 student information. It's directly from the  
7 statute 1111 (E) (2) (B) (8) So I think that I  
8 am happy to go through it now. It would be  
9 helpful to flag things now and thing we can  
10 bring it back next time or if people want to  
11 clarify things now but I am happy to keep  
12 walking through it. Turning to page six  
13 there are three new romanettes that have been  
14 added 7 and 8 and 9 at the top of page six.  
15 We wanted to flag three things as they are  
16 not in 1111 (B) (2) but in the section talking  
17 about data assessment systems. We added them  
18 here because they are new requirements for  
19 report cards that are identified elsewhere  
20 that states now need to start reporting this  
21 information about homeless students and

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1 students who are child in foster care and  
2 students that are a member of the armed  
3 forces. As a result in order to be  
4 consistent with the requirement that states  
5 need to report this information here where we  
6 are talking about the state to make sure they  
7 are disaggregating data on the assessment  
8 that the assessment systems needs to report  
9 data, disaggregated by all of these groups  
10 including these three new groups that they  
11 can report the information as required by  
12 elsewhere in the law. I think Liz has a  
13 question on that.

14 Ms. King: We would like a definition  
15 in the reg of child and foster care.  
16 Probably would be more appropriate for an  
17 actual proposal. I am happy to back you on  
18 that. I wanted to flag it. I imagine other  
19 people want to talk about it unless I have a  
20 proposal which I don't at the moment then I  
21 would want to talk about it later.

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1           It's a great flag.

2           Ms. King: It may be a cross  
3 reference to another law.

4           Ms. Podziba: Thank you for flagging  
5 it.

6           Mr. Rooney: The next piece after  
7 this is just the computer adaptive  
8 assessments which we spent a fair amount of  
9 time on Monday after. I don't think we need  
10 to go through all of that this afternoon.

11          Ms. Rigling: This will reflect  
12 whatever agreement we get in subsequent  
13 sessions. This isn't the whole computer  
14 adapted section that we talked about earlier.

15          Ms. Podziba: This is the blue text  
16 on issue paper one so whatever gets added  
17 would be in addition to this, correct?

18          Mr. Rooney: Yes, that's correct.  
19 Then the next piece at the bottom of page 7  
20 it's not in the statute any longer. It's  
21 irrelevant to keep in our regulations. That

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1 gets us through 200.2. I don't know if you  
2 have a -- 200.5 in the current regulations is  
3 around the time line for assessment  
4 administration and when we in our current  
5 regulations this is a lot of identifying when  
6 states have started administering  
7 assessments. Again, we are not past that  
8 time line. A lot of this is not germane to  
9 the new regulations and the current  
10 requirements for states. A lot of it has  
11 been deleted. We did want to keep a section  
12 in that talked about when assessments needed  
13 to be. We still have the requirement that  
14 reading, art, mathematics assessment three  
15 through eight and once in high school, and it  
16 looks like here that the statute changes it  
17 to high school grades for reading, language  
18 and math. It had been once in grades 10-12  
19 and under ESSA it's now at least once in  
20 grades nine through 12. We made that change  
21 here and the science assessments did not

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1 change at all. Those are the grades I  
2 mentioned yesterday that have to.

3 Ms. Podziba: Maybe it's a good time  
4 to take a break before we get into 200.6. So  
5 remember that Aaron suggested people who are  
6 going to be involved in the subcommittee meet  
7 at the Department of education seal to set a  
8 time for a call. Everyone else be back by 3:  
9 10.

10 Thank you.

11 Mr. Rooney: Page ten. This is the  
12 last section. There's a lot to it. I don't  
13 know if we will spend a lot of time on all of  
14 it. I will go through 200.6. I know we  
15 already have a question from Ron.

16 Mr. Hager: I am just getting in  
17 line.

18 Mr. Rooney: As I start I will flag  
19 that this relates to conversation we were  
20 having in issue 5 B around ELP assessments  
21 and think there's a question on how 200.6 can

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1 be referenced, so just flagging that for your  
2 thinking as we are going through this so  
3 under A it's about accommodations for  
4 students. I would jump down to the bottom.  
5 If you remember around the definition of  
6 where or -- student with disabilities where  
7 the language and the statute references a  
8 student served under 602.3 of IDA where  
9 students are under other acts. I am not a  
10 direct quote from the statute but  
11 nevertheless. Here at the bottom of the page  
12 romanette one and two where we combine that  
13 statute with our existing regulations to say  
14 that it's for each child with a disability as  
15 defined of 602.3 with IDEA and or for each  
16 student with disability covered under acts  
17 other than IDEA including section 504 of the  
18 rehabilitation act of 1973 as amended in  
19 section 504 the student placement. This is  
20 where we took our existing regulations which  
21 talks about students covered under IDEA or

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1 under 504 and in the new statute. It talks  
2 about student accessibility under IDEA other  
3 acts and we try to put those two things  
4 together.

5 Mr. Hager: Right up in A in the  
6 general language up there because you knocked  
7 out section 504 so now the way it's worded as  
8 written would be students, I'm sorry,  
9 appropriate accommodations for students  
10 eligible under the IDEA and other acts. You  
11 got to say students with disabilities other  
12 acts would be every single act for every  
13 student. Do you know what I am saying?  
14 Because you crossed out section 504 I think  
15 you have to add in student with disabilities  
16 in here.

17 Mr. Rooney: You are talking and  
18 under A appropriation accommodations for  
19 students and add with disabilities eligible  
20 under the IDEA and other acts. Thanks, Ron.

21 Mr. Hager: I did have a comment on

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1 the language down in that paragraph one, A  
2 one and I'm not sure exactly what you were  
3 intending here. I will read it the way you  
4 have it. You know that the accommodations  
5 that are necessary to measure academic  
6 achievement of the students relative to the  
7 challenging state academic content standards  
8 and aligned academic achievement standards.  
9 Did you mean add alternate aligned with the  
10 grade for which a student is enrolled? I  
11 just don't know what you meant there when you  
12 have it? It's just not clear to me what you  
13 meant by that? That's what I would propose  
14 that it would say.

15 This is all students with  
16 disabilities this is the aligned achievement  
17 standards that are aligned to the states  
18 content standards. So providing  
19 accommodations so you can measure the  
20 achievement -- content standards an  
21 achievement standards.

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1           It's intentional?

2           Mr. Rooney: Yes, this is for all the  
3 states.

4           Ms. King: Just quick point  
5 on -- isn't that can't you just say the  
6 challenging state academic standards or  
7 whatever that I think it will allow it for us  
8 to build content and achievement standards.  
9 I am not trying to do the lawyer thing. A  
10 larger point slash question I know that  
11 there's lots an lots of words and lots of the  
12 things about our role that involved with  
13 checking in with our constituency that's  
14 something that's going to be super important.  
15 My constituency has lots of things on things.  
16 I want to flag that as overall, and now I  
17 forgot the other point I was going to make  
18 and I will have to come back.

19           Mr. Cheeks: So Patrick my question  
20 is the striking of section 504 and other acts  
21 and leaving other acts was done for what

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1 purpose?

2           Mr. Rooney: To be consistent with  
3 the statute. The statute doesn't call out  
4 504. The statute says students served under  
5 IDEA and other acts. We are using the same  
6 language here in the title. It's officially  
7 not a title under A where it says and other  
8 acts, then down below under romanette two at  
9 the bottom of page ten where we define other  
10 acts include students covered under 504 plan  
11 and the accommodations are identified by the  
12 students.

13           Ms. Podziba: Ron, do you have  
14 additional comments?

15           Mr. Hager: This is assuming that the  
16 stuff we talked about this is the bare bones  
17 of all the stuff that you talked about.

18           Mr. Rooney: This doesn't include any  
19 of the conversations that added in based on  
20 the last update.

21           Mr. Payment: If you change the

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1 sentence it is not necessary, students  
2 relative to the states as article modifying  
3 states. It's really now challenging state  
4 academic content. I think that's plural but  
5 you do have it capitalized, so I don't think  
6 you need the word the in front of states so  
7 it would be of the student relative to  
8 challenging state content standards and  
9 aligning achievement standards.

10 Mr. Rooney: Thanks, Aaron. We are  
11 on page 11. This is where we get into state  
12 guidelines for -- this section here under  
13 number two at the top of the page guidelines  
14 that IEP teams for all students that have an  
15 IPT this is developing dissemination on and  
16 to promote the use of appropriate  
17 accommodations and ensuring this general  
18 special education teacher and other special  
19 staff have assessments including alternate  
20 assessments. Those pieces are being added in  
21 and they apply to value added IEP teams where

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1 all students with disables have an IEP.

2 Transitioning --

3 Ms. King: Sorry to go back to  
4 romanette two for each student with a  
5 disability, if we are listing out 504 as one  
6 example I think we also need ADA specifically  
7 title two of ADA. I realize that this is a  
8 non-exhaustive list that is what we want.

9 Mr. Rooney: We made a note of that  
10 from the conversation yesterday. I am not an  
11 ADA or IDEA expert for any stretch. That's  
12 something we will take back to our colleagues  
13 and discuss.

14 Mr. Hager: This is probably more of  
15 a clarification again. Under this 2 state  
16 part of its IEPT that's specifically not  
17 included in the 504 team because of the way  
18 the statute is written. Maybe just check on  
19 that for us. And then this language again is  
20 not the alternative achievement standards  
21 it's all students again. Thanks.

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1 Mr. Rooney: The bottom of page 11 --

2 Mr. Ahart: You might clarify it when  
3 you speak to this. I want to make sure I got  
4 it right.

5 Mr. Rooney: I will go ahead and see  
6 if I can capture. My guess what I say next  
7 will tender more question. The bottom of  
8 page 11 highlighted in yellow this is a note  
9 for how we organized this. I eluded how we  
10 reorganized it to match the new statute part  
11 of the guidelines for IEP teams were covered  
12 in a different part of the regulation which  
13 is 200.1 which is around the states content  
14 standards. With the change of how things  
15 were reorganized under ESSA we thought it  
16 made sense to move this next section of the  
17 regulations and move it into 200.6 so it's  
18 all with where we are talking about students  
19 with disabilities and the assessment system.  
20 So on page 12 and most of page 12 I think the  
21 requirements are current regulations around

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1 state guidelines for if a state defines  
2 alternate achievement standards. The state  
3 must and this is one and two here are for our  
4 current regulations that are in place already  
5 that states are working with, and then I  
6 think once we get down to actually romanettes  
7 one and two are clarifications that are in  
8 the new -- repeat that -- under B number one  
9 and two are from our existing regulations and  
10 little i and little ii and romanette one and  
11 two are from current statute the new statute.

12 Mr. Ahart: It would appear that a  
13 lot of this is on page 12 and actually  
14 through much of 13 and 14 that these are  
15 redundant to what's already required in IDEA.  
16 Their duplicative of what's already  
17 referenced in other parts of the ESSA that's  
18 what you are trying to get at in the most  
19 recent statement. It seems like it's going  
20 to add additional work for LEA's that's  
21 actually redundant to what's already

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1 required.

2 Mr. Rooney: I appreciate that point.

3 I think everything from number three to the

4 bottom of page 12 through the top of page 14

5 is all taken directly from the ESSA. It's

6 from the statute from 1111 (B)(2)(D) which is

7 where states are admitted to have alternate

8 achievement standards and assessments for the

9 most significant cognitive disabilities. I

10 think that part is directly from the statute

11 but we are happy to look at that.

12 Ms. King: Just to use the word

13 defines at the top I think the verb used in

14 the law I think is select or establishes. I

15 don't know if that is a meaningful

16 difference? I don't know if that's defining?

17 Top of page 12?

18 Ms. King: That maybe a word

19 admittedly not memorized all thousand pages.

20 I just want to make sure it's a consistent

21 verb with the verb that's used in the law

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1 because the state does not have to be  
2 alternate standards, but if they choose to  
3 have alternate standards so whatever that is?

4 Ms. Rigling: How about adopt?

5 Ms. King: I will look at whatever.  
6 It is adopt than it sounds like a great word.

7 Mr. Rooney: Unless people want me to  
8 walk through what's here for the guidelines I  
9 think it's right from the statute. I prefer  
10 not to but I am happy to take questions from  
11 12 to top of page 14.

12 Mr. Cheeks: How did a situation  
13 which was just explained take place because I  
14 kept hearing that this came from the law.  
15 How did a word like defines end up being  
16 different? I am just curious?

17 Ms. Rigling: I think the first three  
18 lines are our addition to set the context for  
19 the rest, I am corrected, it's from the  
20 existing regs. I think what we said in the  
21 existing regs is we did use the word define

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1 like a state may define alternate academic  
2 achievement standards and that's why this  
3 said if a state defines, but now that the  
4 statute authorizes the adoption of alternate  
5 academic achievement standards I think we  
6 should use the word adopts. Thank you very  
7 much, I mean that's a very good point of  
8 clarification.

9 Mr. Rooney: Are there questions on  
10 the state guidelines here in B?

11 Mr. Pohlman: I think where we were I  
12 was mentioning earlier around the inclusion  
13 of 200.6 in the regulation around the EL's, I  
14 think that Ron had suggested that this is the  
15 section where I was wondering is it necessary  
16 to have these elements in that provision of  
17 the EL's or could we say as we do similar to  
18 200.2 can we separate 200.2 A or whatever and  
19 calling those specific citations in the  
20 regulation itself rather than the whole  
21 thing? I think that we would be overly

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1 inclusive. I would have to parse all of that  
2 out. That is what I was meaning at earlier  
3 and the part I was looking at the extent to  
4 this section, I was talking about what impact  
5 for spatial and graduation time. For  
6 instance those are on page 13.

7 Mr. Rooney: Can you expand? I am  
8 not sure I understand?

9 Mr. Pohlman: In response to issue  
10 paper six that with the new regulatory  
11 language that five B -- issue five B that we  
12 consider adding also 200.6. My comment to  
13 that is I think we needed to parse out within  
14 200.6 where relevant to that section and not  
15 simply say the whole part of the regulation  
16 was applicable or relevant. We are getting  
17 to the part of 200.6 where it may or may not  
18 be relevant to include around the EL's.

19 Mr. Rooney: Have you seen anything  
20 so far in either 200.6 appropriate  
21 accommodations for students with disabilities

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1 EL's were under IDEA and other acts and then  
2 that's all of what we looked at on pages, and  
3 11 is A and then B is the state guidelines  
4 alternate achievement standards with  
5 guidelines for IEP teams. Is there something  
6 in there that you think is irrelevant?

7 Mr. Pohlman: I am wondering about  
8 the consultation and communication about the  
9 impact to a regular high school diploma and  
10 things that may or may not like, like the  
11 testing relevant to the English language  
12 proficiency standards. I don't know if that  
13 has a relevancy to high school diploma's and  
14 whether or not the IEP teams will be confused  
15 or instructed to have conversations with  
16 families about things that actually don't  
17 have relevance, but they need to where states  
18 may need to have checklists. Do you get what  
19 I am saying Liz?

20 Ms. King: They should be provided  
21 for the ELP assessment, the process for

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1 determining who is selected to participate in  
2 the alternate assessment aligned to alternate  
3 achievement standard that should apply. The  
4 language regarding the alternate standards  
5 themselves and the guidance around the IEP  
6 team that's a question around content  
7 instruction so that child is already included  
8 because they are a child who will receive  
9 instructions that is consistent with the  
10 requirements around instruction provided to  
11 students who will be receiving instruction  
12 consistent with the alternate assessment  
13 aligned to alternate achievement standards.  
14 I think it can be parsed out. I think it's a  
15 matter of just for the purposes of the ELP  
16 what matters are two things. One is to whom  
17 does an alternate assessment of English  
18 language proficiency? Which of those  
19 students with the most cognitive  
20 disabilities, which of the students with the  
21 most significant cognitive disabilities who

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1 are English learners should be included in  
2 the ultimate assessment of english proficiency  
3 that's issue one. Making sure we have that  
4 identification process clear and then what  
5 for all students with disabilities who are  
6 given the English language proficiency  
7 assessment. What are the accommodations that  
8 are due to them as a child with a disability  
9 so that they have those same accommodations  
10 on the ELP assessment they would have on a  
11 content assessment right is that where you  
12 were going rich?

13 Mr. Pohlman: If you look at B one  
14 and two clear explanation of differences  
15 between achievement and based upon alternate  
16 achievement standards. How would that be  
17 relevant if you are talking about a provision  
18 for English language proficiency exams?

19 That's my statement so Liz says it in a way  
20 different than I do. I am looking at, I have  
21 experience with states reading stuff like

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1 this and then being otherly inclusive to  
2 guidance to IEP teams that will then make it  
3 completely unclear to the IEP teams about  
4 what they have to get done during that IEP  
5 team, and they are going to be checking forms  
6 in IEP team meetings that are meaningless,  
7 and I fear only will confuse the families of  
8 students it's not directly relevant that's my  
9 ultimate concern.

10 Ms. Podziba: Can we leave it to the  
11 Department to isolate what is relevant?

12 Ms. King: To sort of reinforce  
13 before and I think Kenji and Martha can talk  
14 about children who fit in both categories of  
15 their expertise, but sort of where does the  
16 IEP team fits in identifying child for an  
17 alternate ELP assessment, and how does that  
18 work and then what is the clarity? I think  
19 you are absolutely right, rich. I don't  
20 think there's any value to children or us to  
21 sort of have an irrelevant requirement here.

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1 What we are trying to make sure is that the  
2 ELP is a valid assessment, what an English  
3 learner with a disability knows about English  
4 deficiency.

5 Mr. Hager: You had said B I had  
6 comments on B going forward a little bit on  
7 page 13. Are we there? Yes then I do. The  
8 first one is the requirements of the little I  
9 and just before the four there. Are those  
10 right from the statute? Complete the  
11 requirements of regular high school diploma  
12 and complete the requirements on time that's  
13 the phrase they use in the ESSA?

14 Mr. Rooney: I believe that's the  
15 language from the statute.

16 Mr. Hager: It doesn't use the word  
17 on time.

18 Ms. Thurlow: -- Inaudible.

19 Mr. Rooney: Martha asked a question  
20 about states that rate a graduation time.

21 For the purpose of this conversation I would

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1 not like to bring it up unless people want to  
2 bring it up it's not -- it might take us off  
3 track.

4 Mr. Hager: This is all guidance for  
5 the parents on time could mean within the  
6 normal four years it could mean within 22?  
7 You know the guardedness of the participants  
8 is that if they take this assessment, if they  
9 take the alternate achievement standards and  
10 the assessment to go along with it, it may  
11 affect their graduation schedule. Maybe  
12 that's a better way of putting it, is a  
13 better way of putting it. Assuming that's  
14 what you are getting here. What we must tell  
15 the parents if you go down this road and  
16 agree to this it's going to effect, you know,  
17 access to the diploma which is the one and  
18 also the time in which you may graduate may  
19 take longer than typical. I think that's  
20 what the intent that's there?

21 Mr. Rooney: To go back to the actual

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1 language in the statute it's slightly  
2 different than what's here for romanette one  
3 and two. The requirement is if they identify  
4 how participation in such assessments may  
5 delay or effect the student from completing  
6 the requirements for a regular high school  
7 diploma.

8 Mr. Hager: Kind of spelling it out

9 Mr. Pohlman: It's broken out in two  
10 pieces and worded slightly different.

11 Ms. Podziba: Someday there will be  
12 technology you will press a button and your  
13 name will go on a screen, Ron?

14 Mr. Hager: I had one more I know the  
15 definition of UDL is to the extent  
16 practicable, but when you are talking about  
17 the state describing how they used UDL I  
18 don't know if you know to the extent  
19 practicable. I think here you are asking  
20 what did you do? How did you utilize  
21 universal design? It really doesn't fit

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1 here. It fits earlier in their criteria when  
2 they do it. When they are explaining to you  
3 what they did you don't need that qualifier.

4 Mr. Rooney: Thank you. That is a  
5 direct quote from the statute. It says  
6 describes in the state plan the steps that  
7 the state has taken to incorporate universal  
8 design for learning to the extent feasible.  
9 It's on the top of page ten.

10 Mr. Hager: Does it include any  
11 alternate assessment not other assessments?

12 Mr. Rooney: So the language here it  
13 says in alternate assessments.

14 Mr. Hager: Other parts of the  
15 statute require that they have universal  
16 design for learning considered in all the  
17 assessments not just the alternate  
18 assessments.

19 Mr. Rooney: Elsewhere in the statute  
20 if you look at the top of page 27 of the  
21 statute where they are talking about all the

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1 assessments Roman numeral little 8 all  
2 assessments must be development to the extent  
3 practicable for the universal design for  
4 learning. It's why we had that reference  
5 earlier. We incorporated the definition of  
6 UDL there so that it's referencing all the  
7 content assessments Rich's point that's  
8 talking about the English language, arts,  
9 math and science this is where it references  
10 UDL.

11 Ms. Podziba: I think you can keep  
12 going.

13 Moving to page 14 Roman numeral C  
14 alternate assessments is it here we are  
15 adapting where revising the current  
16 regulations because to include the statutory  
17 terms where we reference that the states  
18 academic system develop consistent with 600.2  
19 which we walked through must provide one or  
20 more alternate assessments for a child with a  
21 disability as defined by IDEA, and then say

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1 provided such alternate assessments looking  
2 down a little bit to Roman numeral I the  
3 academic content standards under section 1111  
4 B one act. I think because we are making  
5 those changes we slightly provide language  
6 which we deleted alternate assessments yield  
7 assessments, yield results for the grade  
8 which the student was enrolled and if we  
9 reference the content assessments earlier we  
10 don't need to reference them here and except  
11 for students with the most significant  
12 cognitive disabilities alternate assessments  
13 must on the top of page 15 the aligned with  
14 the challenging state that can accompany  
15 standards and the overall results and the  
16 achievement of the ultimate academic  
17 standards that the states have defined.

18 Ms. Podziba: Let's take a pause  
19 there.

20 Mr. Hager: Here's where I think  
21 there is a problem with the cuts and paste

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1 method. There's two alternate assessments  
2 one which is in one and two which is for the  
3 students with the most significant cognitive  
4 disabilities. Where is the authority for the  
5 other one that's in one? Because I know that  
6 the intent of the statute was to have you  
7 know one alternate assessment in D and E is  
8 the one standard and D is the assessment. I  
9 don't know how you are getting two  
10 assessments, two alternate assessments?

11 Mr. Rooney: I think this comes from  
12 the interaction from ESSA and IDEA, where  
13 IDEA says states must have an alternate  
14 assessment, but does not define that  
15 alternate assessment ultimate academic  
16 achievement standards under ESSA states then  
17 must have an alternate assessment, and they  
18 may have an alternate assessment based on  
19 alternate achievement standards. I think as  
20 you read those two pieces together it's where  
21 the potential that states could have multiple

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1 assessments. If they have an alternate  
2 assessment other than the one we have been  
3 talking about yesterday aligned to students  
4 with the most significant cognitive  
5 disabilities then the requirement is that  
6 test measured grade level achievement and  
7 aligned the challenging academic and  
8 achievement standards for providing  
9 comparable information as the general  
10 assessment.

11 I would suggest then in the C one  
12 little I say our fully aligned with the  
13 challenging state academic content standards  
14 make it very clear it's not 2% it's fully  
15 aligned. I know what you are talking about  
16 and I don't know how they all fit in what  
17 original no child left behind which is maybe  
18 in the regs for no child left behind and is  
19 this still a requirement of idea. We have  
20 the regular assessment and then you have a  
21 regular assessment with the accommodations

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1 and that are fully aligned with state  
2 content, and then you added alternate  
3 assessment that also fully aligned with state  
4 content standards, then you had the two  
5 percent which is now gone, and then you had  
6 the alternate academic achievement standard.  
7 If this is referring to fully aligned, I  
8 think you need to be very clear that it's  
9 fully aligned one.

10 Mr. Rooney: That's fair. That was  
11 the reference we are trying to make here. I  
12 will say that I think there may only be one  
13 state that has such an aligned assessment  
14 alternate assessment aligned to grade level  
15 achievement standards. It wouldn't be a hard  
16 thing to do. I am sure.

17 Ms. King: I think this is where the  
18 ELP assessment goes? Unless there are other  
19 thoughts under C, alternate assessments? I  
20 am also still confused about this extra test  
21 but I think I am going to have to read the

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1 whole thing as a whole thing. Somewhere in  
2 here there should be in the list of reading,  
3 language arts, math and science should also  
4 include language proficiency. I think  
5 probably also more words so that not  
6 everybody is taking the ELP assessment, but  
7 only English learners are taking the ELP  
8 assessment. I think there was -- do we know  
9 what ESSA did regarding alternate standards  
10 that were not alternate standards aligned --

11 Are you asking about modified  
12 standard?

13 Yes, there's an explicit prohibition  
14 in the statute of the existence of something  
15 that is alternate standard that are  
16 not -- there we go. I'm back yes, we have  
17 there's a prohibition in the statute against  
18 those alternate standards on anything, but  
19 Martha do you have any thoughts on the  
20 subject?

21 Ms. Thurlow: I thought I remembered.

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1 You guys will know better that there was a  
2 prohibition against any alternate assessment  
3 other than the alternate assessment based on  
4 alternate achievement standards.

5 Ms. Rigling: Can I read it it's on  
6 my page 19. It's on my page 19. It's in the  
7 standards part. It's prohibition on any  
8 other alternate or modified academic  
9 achievement standards. Says the state shall  
10 not develop or implement for use under this  
11 part. Any alternate academic achievement  
12 standards for children with disabilities that  
13 are not alternate academic achievement  
14 standards that meet the requirements of  
15 clause one. Those are alternate academic  
16 achievement standards for children with most  
17 significant cognitive disabilities.

18 Ms. King: So that leaves us I mean I  
19 feel like we have put so much rhetorical  
20 effort at least into reducing the number of  
21 assessments. Doesn't that then leave us with

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1 their, I think I'm still puzzled to why this  
2 is a regulatory reference to these alternate  
3 standard that is are not those alternate  
4 standards.

5           They are not alternate achievement  
6 standards that's the distinction that's very  
7 nuance. This is you have an alternate  
8 assessment based on grade level achievement.  
9 So it's saying the same amount of information  
10 and same content in order to be proficient on  
11 the alternate assessment versus the general  
12 assessment. That is not prohibited.

13           Ms. King: What is the relationship  
14 between that assessment and ESSA?

15           Mr. Rooney: ESSA does not speak to  
16 it. You cannot have any alternate  
17 achievement standards for students with for  
18 children that are not alternate achievement  
19 standards that meet the requirements under  
20 clause I. You can set grade level  
21 achievement standards you can alternate

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1 assessment on grade level. There's no  
2 prohibition if a state wanted to do that?

3 Sure, so I don't, right in terms of  
4 assessment required under ESSA right there is  
5 either you are taking the general assessment  
6 or are you taking the alternate assessment  
7 and alternate achievement standards and in  
8 either situation you are taking the ELP  
9 assessment if there is no other assessment  
10 required under ESSA why are there regs about  
11 it?

12 Mr. Rooney: I think that the  
13 distinction is that I have to try to say this  
14 clearly. States have the permission to  
15 create alternate achievement standards and  
16 assessments that measure those standards.  
17 States also have to create grade level  
18 achievement standards and develop assessments  
19 that measure those. They can create one  
20 general test and an alternate assessment as  
21 long as it's measuring the same achievement

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1 standards I don't think ESSA speaks to that  
2 at all.

3 Ms. Rigling: IDEA does. It  
4 specifically authorizes alternate assessments  
5 equity level based on grade level  
6 achievements

7 I am just puzzled to what this is  
8 doing in the ESSA regs. I hear that states  
9 are allowed to do that but I mean I can move  
10 on.

11 Ms. Rigling: We are trying to be  
12 consistent as we said yesterday with the  
13 IDEA. This is also consistent with position  
14 that was taken since the beginning of NCOB  
15 under the ESEA where we felt because of IDEA  
16 1997 that required a state to have an  
17 alternate assessment that if before we  
18 authorized alternate assessments based on  
19 alternate achievement standards they had to  
20 have an alternate assessment based on grade  
21 level achievement standards. We felt like

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1 that's still an authority that they can use.  
2 I think your concern is probably that if a  
3 state tries to do that it may not be at grade  
4 level and I think we are very concerned too.  
5 We would hope that the peer review process  
6 would look very carefully at alternate  
7 assessment designed to be measuring grade  
8 level achievement standards to make sure that  
9 it was in fact measuring grade level  
10 standards.

11 Ms. King: My concern is more I think  
12 we want to be abundantly clear there are  
13 narrow assessment requirements under ESSA and  
14 there's narrow rules who includes which  
15 assessment everybody including that and all  
16 of that and there's assessment data. I am  
17 not, I do like regulating when we need to.  
18 If we don't I am not sure. I feel like it's  
19 confusing. I might be totally missing  
20 something I am happy to move on and then go  
21 talk about some with colleagues with more

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1 expertise.

2 Ms. Podziba: That's a good idea and  
3 if you and the Department have a conversation  
4 offline. The rest of us are glazing over.

5 (laughter)

6 Mr. Hager: I have one still on this  
7 one that I have another one for the other  
8 one. It's critical that not be part of the  
9 peer review process. This is a compliance  
10 issue. If a state develops an alternate  
11 standard that is not fully aligned with the  
12 gray content it's a violation of the ESSA.  
13 It has to be fully aligned with the grade  
14 level content. The only exception is the  
15 alternate achievement standards. It's not  
16 just peer review. It's a violation of the  
17 IDEA and the ESSA, so you have to be if you  
18 are going to be this. I am going to end it  
19 here. If you are going to put it in here  
20 it's very helpful to cross reference the  
21 authority for it. Make sure if you are very

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1 clear it's fully aligned not an alternate  
2 achievement standard and C that it's not  
3 something subject to peer review. I do have  
4 another comment which is two. This is kind  
5 of going and then I am pretty much done.  
6 This is carrying over the idea we talked  
7 about with Martha yesterday about the  
8 alignment of the alternate achievement  
9 standard with the grade level. If you go to  
10 the top of page 15, aligning with the  
11 challenging academic content standards for  
12 which the grade in which the child was  
13 enrolled. I would suggest adding that phrase  
14 here to make that clear that this is  
15 basically what we talked about yesterday  
16 since it's here just putting it in.

17 Mr. Rooney: To clarify you mean in  
18 Roman numeral I?

19 Mr. Hager: At the top of page 15.  
20 That the alternate achievement standards are  
21 aligned with the challenging state content

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1 standards for the grade in which the student  
2 is enrolled, so we have a fifth grade student  
3 the standards are based on the fifth grade  
4 standards it's not the same standards as an  
5 example.

6 Mr. Rooney: I was going to say that  
7 in Roman numeral two we have the same problem  
8 where we use the word define where we should  
9 have the word adopted, so we say standards in  
10 the state has defined. We should say adopted  
11 so we are consistent with our language.

12 Ms. Jackson: I have been  
13 investigating other things while you are  
14 talking. I am wondering and I have lots of  
15 questions that are probably out of the scope  
16 of our work. I am intrigued to not totally  
17 inundate you what would be the best way for  
18 me to direct questions to the Department in  
19 between our meetings to sort of filter and  
20 see if it's appropriate for a response?

21 Mr. Rooney: I defer to you if

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1 there's a protocol for this.

2 Ms. Podziba: You can send me the  
3 questions and I will distribute it to me and  
4 everyone in the department. Let me think  
5 what's the, let me think about that question  
6 for just a few minutes. Thanks.

7 Mr. Rooney: We are still on page 15.  
8 So number three which is right in the middle  
9 this is where we get into the cap at the  
10 statewide level of the number of kids taking  
11 alternate assessment based on alternate  
12 academic achievement standards AAAES -- so  
13 this is where we get into that section that  
14 we spent some time on yesterday. This is the  
15 statutory language I don't want to spend a  
16 lot of time on it. There's a requirement  
17 that the state not assess more than one  
18 percent, and then number four the state may  
19 not prohibit an LEA for assessing more than  
20 one percent and this is in a statute that if  
21 an LEA see if one percent of it assessed on

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1 alternate assessment they must provide  
2 information to the state justifying the need  
3 to do that and the state must provide  
4 appropriate over sight of their LEA's that do  
5 not provide sufficient justification.

6 Mr. Ahart: I would just like you to  
7 take a second look at romanette three at the  
8 bottom of 15 there. It seems that is it  
9 expands the statutory language a bit.

10 Mr. Rooney: I think you are right.  
11 If you look at the statute on page 29 at the  
12 very top this is about there's no prohibition  
13 at the bottom of page 28 and then on page 29  
14 the state should provide appropriate over  
15 sight at determined by the state of any local  
16 education that's required to submit  
17 information to the state so I think the so I  
18 think your suggestion is that language be the  
19 same language and here we say LEA does not  
20 provide sufficient information justification  
21 you want to say of all LEA's that exceed one

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1 percent?

2 Mr. Ahart: Right. Thank you.

3 Ms. King: I would certainly not say  
4 of any LEA. I would want to use a different  
5 word and say in the event that just to start  
6 with the expectation which I realize is not  
7 an additional restriction, but start with the  
8 expectation that LEA not assess more than one  
9 percent on the alternate assessment not that  
10 it has any effect on the ability to do that.  
11 I would change the word any. Also, we don't  
12 we can rehash the -- it's not helpful because  
13 you are going to take that into  
14 consideration.

15 I don't see the need to change the  
16 statutory language that's my response to  
17 Liz's comment.

18 Mr. Rooney: It's not all LEA or any  
19 LEA that exceeds one percent of its testing  
20 students. Okay.

21 Ms. King: I'm sorry it doesn't say

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1 any except-- LEA exceeding the cap shall  
2 submit that what you are referring then say  
3 instead of saying any say A or and.

4 Mr. Rooney: If you look on the next  
5 page. A state that exceeds one percent then  
6 the state has to provide over site of any LEA  
7 that submits that information. I think  
8 that's the point Thomas is making.

9 Ms. King: Okay.

10 Mr. Rooney: The top of page 16. So  
11 this is just noting that the state may  
12 request at the secretary wave the cap of one  
13 percent. It's noting the exception that's  
14 noted in the statutes. Then D is reporting  
15 this is something states are currently and  
16 have been reporting for the last 15 or so  
17 year ins our regulations and so we changed  
18 some of the language a little bit to update  
19 to be consistent with the ESSA, but it does  
20 not change this expectation or reporting.

21 You can see under Roman numeral four on page

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1 16 where we eliminate the mention of modified  
2 achievement standards and it's no longer  
3 permitted and then we are onto E. This is a  
4 little hard to see in the way that on page 16  
5 at the very bottom.

6 Mr. Hager: I did have a question on  
7 this the first one the triple 3 again just  
8 make that clear about the fully aligned to  
9 keep consistent with the same one, and then  
10 you have the four I think you crossed out the  
11 five or is it crossed out. Is that five that  
12 little romanette five crossed out? It's four  
13 then we alternate assessments aligned with  
14 the alternate academic achievement standard.  
15 It's just fully again. Thanks.

16 Mr. Rooney: All right. E is talking  
17 about English learners. So I don't know that  
18 there are we are going to page 17 this is  
19 where we use the language that's in the  
20 statute about identifying other than English  
21 is was significant extent in student

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1 population and identifying existing  
2 assessments -- are available and indicate the  
3 languages other than English that are present  
4 to a significant extent in the participating  
5 population in which -- are not available and  
6 must make every effort to develop native  
7 language a-- present to a significant event.  
8 All of this is breaking up into smaller  
9 pieces to make it a little more but trying to  
10 copy what you spent a fair bit of time  
11 talking about this morning.

12 Ms. Pin Ahrens: At the top of page  
13 17, big A, it says a reasonable  
14 accommodations. I don't think that's part of  
15 the statute that should be appropriate  
16 accommodations; is that correct? Is that a  
17 typo?

18 Mr. Rooney: That's from our current  
19 regulations and --

20 Ms. Pin Ahrens: We should update to  
21 match the new one on page 25. Number two

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1 under Roman numeral 7 if I said that  
2 correctly?

3 Mr. Rooney: You mean capital three?

4 Ms. Pin Ahrens: Yes, I'm sorry, it  
5 says appropriate here it doesn't say  
6 reasonable anywhere. If it were present I  
7 would say we should strike reasonable and  
8 replace it with appropriate.

9 Mr. Rooney: Thanks for that. I  
10 think we can jump across page 18 and page 19.

11 Ms. Ricker: Just wondering based on  
12 this conversation if at the top of page 18  
13 where it says a state may request assistance  
14 from the secretary and identifying  
15 linguistically and academic assessments that  
16 are needed. If we can add in there based on  
17 this morning's conversation a state or  
18 sovereign nation or is that authority already  
19 implied in sovereignty? I don't know or  
20 would that be the place to add it?

21 Mr. Payment: I think that maybe one

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1 of my clarifications that I am going to ask  
2 for in another request for consultation.

3 Ms. Podziba: Can you try using this  
4 mic again just because people then we have  
5 got speakers and some people can't hear you  
6 through that other mic. Thanks.

7 Mr. Rooney: It's possible it might  
8 work better if it's close to myself. Moving  
9 to page 19 unless sorry, Leslie, did you have  
10 something?

11 Ms. Harper: For clarification for  
12 Mary Cathryn and coordination with Aaron's  
13 statement if you go all the way back to the  
14 beginning and insert 3127 considerations on  
15 page one except as provided in 200.6 in  
16 sections and section 31.27 which would define  
17 native American language medium students,  
18 then here on page 18 you would insert and  
19 native American language medium students  
20 under big number two.

21 Mr. Rooney: I'm sorry I had trouble

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1 following. From the beginning of where for  
2 the citation you mentioned?

3 Ms. Harper: On page one talking  
4 about state responsibilities for assessment  
5 it's near under two little two B little I.  
6 It's down in the bottom third except as  
7 provided in 200. 6 C and 11 B 2 H and 1204  
8 of the act we could insert there students  
9 covered under 3127 that would define native  
10 American language medium students as we  
11 talked about in today's conversations making  
12 a clear definition and a clear recognition of  
13 those students. We would have that reference  
14 and then Ms. Ricker was asking about the  
15 inclusion of state or sovereign nation on  
16 page 18. When we describe our students if we  
17 have that definition of native American  
18 language medium students which is already  
19 recognized in section 31.27 of this law then  
20 that is understood to include the student who  
21 is are included in those programs, native

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1 American, native Hawaii and Alaska native  
2 student who is are being educated in the  
3 medium of their own language that would cover  
4 what Mary Cathryn was asking and that's what  
5 we would take back.

6 Mr. Rooney: Can I ask a  
7 clarification? I think the results if I am  
8 corrected in thinking this of adding on page  
9 one the reference here mentioning then you  
10 would exempt all of native American students  
11 from the assessment system all together. I  
12 think it would.

13 Ms. Harper: No, as participating in  
14 Native American language medium programs.

15 Mr. Rooney: Those kids would be  
16 exempt from the assessment? There would be  
17 no assessment for those students?

18 Ms. Ricker: It's a consideration.  
19 No they would be given their alternative  
20 assessments. Again what we talked about as  
21 designing those assessments in the language

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1 of instruction.

2           Mr. Rooney: That's different than  
3 the exception which is that. Sorry I think  
4 we will take that back and consider it. I am  
5 not sure I understand exactly then they would  
6 not be covered? All of this would exempt  
7 those students from having anything with  
8 assessments? I think if I understand where  
9 you added.

10           Mr. Payment: The model of Puerto  
11 Rican exception is what we are asking for to  
12 the extent to which a state would align an  
13 assessment. I guess we are not using align  
14 any more. Have an assessment that is  
15 consistent and it works that's fine. If they  
16 don't then it would be an exemption.

17           Mr. Rooney: This part of the law  
18 applies to Puerto Rico as well. The only  
19 exemption that I have is testing the student  
20 in a native language in English after they  
21 have been enrolled in school for three years.

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1 They can continue to test those students in a  
2 language for more than three years that is an  
3 exception for the students made in the  
4 commonwealth of Puerto Rico. The rest of the  
5 regulations apply to students in Puerto Rico  
6 the same as they apply to students in any  
7 other area of the United States.

8 Ms. Harper: Let's put a pin in that  
9 and check in it and the next section is where  
10 you would insert that reference as well.

11 What page are you on, may I ask?

12 Mr. Rooney: We are on page 18.  
13 Leslie was suggests that we going to page  
14 one.

15 Mr. Wilbanks: Oh lord. (laughter)  
16 can I ask you to go back to just 17. I get  
17 the under reasonable accommodations the first  
18 part of I made in the first half of the page  
19 the rest of it how much of this is not in the  
20 statute?

21 Mr. Rooney: On page 17? I believe

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1 this is all directly from the statute.

2 Mr. Wilbanks: Verbatim or  
3 paraphrase?

4 Mr. Rooney: Verbatim. If you go to  
5 page 29 of the statute you look at letter F  
6 half way down the page. So this is where the  
7 state plan shall identify the languages other  
8 than English significant to the significant  
9 population of the -- annual student  
10 assessments are not available and needed.

11 Mr. Wilbanks: Did you say to what  
12 extent?

13 Mr. Rooney: So that if you -- yes to  
14 a significant extent is there.

15 Mr. Wilbanks: Significant extent,  
16 okay.

17 Mr. Rooney: If you go down to Roman  
18 numeral two they will -- may request  
19 assistance from the secretary if it's fully  
20 accessible if accessibility measures are  
21 needed.

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1 Mr. Wilbanks: All right.

2 Ms. Podziba: Leslie, are you done?

3 Ms. Harper: For a moment.

4 Mr. Evers: Just in general I hope  
5 that we are not and I know we have done some  
6 small things that help people understand, but  
7 I hope we are not including things now in the  
8 regulations that are part of what we kind of  
9 negotiated or you know what we have talked  
10 about for the last three days in here now. I  
11 don't know if that's happened but if it has I  
12 would reconsider.

13 Mr. Rooney: Our intent of this was  
14 this is based on not the discussion of the  
15 last three days that this is based on what  
16 was in the ESSA.

17 Ms. Pompa: I was going to ask that  
18 in a different way because I was moving onto  
19 19 and going to remind you because I hear  
20 people reminding you of things we talked  
21 about this morning. This is where I would

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1 put the statewide assessment. Under this  
2 understanding that we are talking about that  
3 next time. We put a pin in it somewhere I am  
4 fine.

5 Ms. Podziba: Just to clarify this  
6 text is meant to reflect statutory changes  
7 and not negotiated changes. The negotiated  
8 changes they are not changes but what the  
9 Department heard and what they, the  
10 Department will provide different regulatory  
11 text that reflected the conversation. We are  
12 trying to get through this. I think the point  
13 that the Department is trying to do is to in  
14 order to make our discussions more focused as  
15 Aaron was suggesting so that we can clear  
16 through what doesn't need to be discussed  
17 because it's statutory. I think what their  
18 proposing is to get through all of this is so  
19 that when we come back we will be able to  
20 focus on that which needs to be negotiate  
21 that had is not statutory that's more in the

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1 vein of where the statute may need to be  
2 further refined and described.

3 Mr. Rooney: That's right Susan our  
4 intent will be to try to make clear that what  
5 we went through today either make this the  
6 blue text so you know this is the statutory  
7 pieces and bring back for the group's  
8 discussion and consideration how we respond  
9 to the different comments we heard over the  
10 last three days so that way you can see the  
11 pieces together and see how we are trying to  
12 address the comments everyone is making.

13 Mr. Payment: Just in the spirit of  
14 referencing other laws or corrections to make  
15 it clearer that's actually that's  
16 what -- does someone have control of my Mic  
17 here? I have 16 siblings back home I have  
18 learned how to project. In the spirit of  
19 trying to make sure that the law is clearer  
20 and reference to other law that is effect our  
21 population that's why we brought it up at

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1 this stage. I think it's appropriate at the  
2 next level and we are going to gather input  
3 for it and exercise our right under the  
4 Department rules for consultation, so this is  
5 why we brought it up. We do think we are  
6 satisfied putting a pin in it and coming  
7 back.

8 Ms. Podziba: We may need to end. We  
9 lost all the mics.

10 Ms. King: Don't worry ours still  
11 works. It will be just me from now on I will  
12 do all the talking. It's all part of my  
13 plan.

14 Mr. Rooney: I think we are just  
15 about done and not the next piece on page is  
16 around assessing English proficiency. We  
17 spent a little bit of time on this on five B.  
18 This is the language in the statute. It  
19 doesn't include the discussion we had. I  
20 don't know if it's worth our time to go  
21 through this component. Number four which

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1 starts on the bottom of page 19 is for  
2 recently arrived English learners and this is  
3 taken from this statute where our regulations  
4 in the past and not 2007 the Department put  
5 out regulations that address recently arrived  
6 English learners so student ins their first  
7 year in the United States exempt from one  
8 administration of the reading language arts  
9 assessment but they have to take the math and  
10 science assessments but right at some  
11 flexibility in the accountability system when  
12 ESSA passed that include that had regulatory  
13 permission is now in the statute which is  
14 what's in here, but it also provided the new  
15 law provides an additional point for -- okay.  
16 If it's okay I would rather not go through  
17 this piece because this doesn't include I  
18 don't think the updated statutory components  
19 of recently arriving -- including in the  
20 system our intent that we will just repeat  
21 what's in the statute four here it's not

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1 currently there so right now the language is  
2 mostly just talking about changing the  
3 limited English proficient to a English  
4 learners after a few other minor changes and  
5 on page 21 I will just go through this  
6 quickly then I will be done. Definitions  
7 related to English learners on number five  
8 which are not changed and then we had  
9 eliminated the last piece under number two on  
10 page 22 I think it's no longer in the  
11 statute. I will stop there there's a couple  
12 questions.

13 Mr. Evers: Yes, I apologize, too. I  
14 missed something I wanted to talk about. I  
15 was thinking about the root canal I am having  
16 tomorrow. (laughter). Anyway page 17 B. If  
17 we just put a pin on that double check that's  
18 the actual language. I am not convinced that  
19 it is.

20 Ms. Rigling: The bottom half?

21 B identifying the existing --

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1           Ms. Jackson: Okay, so I am probably  
2 totally lost so I am going to throw something  
3 out there and just for your consideration  
4 sometimes there's subgroups referred to where  
5 the list is very similar. So we are on page  
6 six when it's talking about economically  
7 disadvantaged students, homeless status and  
8 children in foster care and a parent in armed  
9 forces there's that list. If you look back  
10 on page 21, I can't honestly keep track of  
11 what this is referring to. It has migratory  
12 and other mobile students and students  
13 experiencing homelessness. As a teachers who  
14 works with kids effected by trauma often  
15 unnecessarily separated from their peers. I  
16 am just curious about where these groups are  
17 coming from like why they are different in  
18 some places I am sure there's a good  
19 explanation and where there maybe room to  
20 connect them to the section on student's who  
21 have been neglected or delinquent.

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1           Mr. Rooney: That's a  
2 good -- experiencing homelessness. It is  
3 referencing the same actual section of the  
4 law about the section 7252 of -- of the act.  
5 I think we can try to provide consistent  
6 language based on that.

7           Ms. King: It may be what Audrey  
8 said. This is where the definition can go  
9 here or I guess its children in foster care I  
10 can't remember the right words, child in  
11 foster care it would go here or both.

12          Mr. Rooney: So we will take that  
13 back that's a good suggestion. We will try  
14 to figure out how to best handle that.

15          Ms. King: I don't know if you put  
16 students in the armed forces the distinction  
17 on the different times and different grown-  
18 ups are listed distinction between those  
19 students included as subgroups for  
20 accountability or for reporting purposes. I  
21 think it's just a distinction to Audrey's

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1 question, but the answer is we pay a lot of  
2 attention to who's on this list. I don't  
3 know if you then need to also put student  
4 with a parent who's a member of the armed  
5 forces here as well. I don't know if it  
6 matters if you have the same definition twice  
7 when you referring to the same thing, but I  
8 don't think we use these terms anywhere else.  
9 Anyway, I will stop. I don't think we  
10 defined economically disadvantaged but its  
11 other places in the law.

12 Ms. Jackson: That's where I was  
13 curious about 1401 and 1402 just children who  
14 have been neglected and delinquent. Just if  
15 there's any space to if it would be  
16 appropriate to connect in anyway those text.

17 Mr. Payment: There's some  
18 distinctions under EQWA in HL welfare. We  
19 have a state licensed foster care agency  
20 within our tribe but not all tribes have that  
21 and they do follow federal law. They may not

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1 be quote unquote foster kids they may be in  
2 tribal care pursuant to another federal law.  
3 So I think however or whatever term we come  
4 up with it needs to be exclusive rather than  
5 exclusionary, inclusive rather than  
6 exclusive.

7 Ms. Jackson: If you are talking  
8 about a population that changes frequently  
9 for yearly accountability tests a child in a  
10 foster I have had children in and out of  
11 institutions and foster care and family care  
12 and mental health institutions just in a span  
13 of six months. So the expanding it would  
14 actually serve to include more children who  
15 may need consideration.

16 Ms. Podziba: This is starting to  
17 sound like something we can negotiate.  
18 Perhaps we can set it aside when we have  
19 draft language or at least a flag where it  
20 goes. I realize that was a slog but we  
21 actually made it through all of that reg

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1 text. I understand that the Department is  
2 going to turn the red on those pages into  
3 blue. The text that will be focusing our  
4 negotiations on will be the red text from the  
5 issue paper that is we discussed. I am happy  
6 to tell you that we actually have someone  
7 who's going to make a public comment. I  
8 would like to make time for that person to do  
9 that and that is Adam Fernandez.

10 Are we going to talk about process  
11 and next steps after that?

12 Mr. Fernandez: I'm a legislative  
13 attorney at MALDEF. We are a nonprofit of  
14 rights law firm largest Latino civil rights  
15 law firm in the nation. So this morning we  
16 discussed a bit in section EL's and  
17 accommodations for content assessments.  
18 There's quite a bit of discussion about the  
19 clause every effort to develop assessments.  
20 I just wanted to first take a legal  
21 historical perspective and say that clause

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1 was in NCLB and that a lot of the discussion  
2 around like is new like what has to happen it  
3 was a little concerning to me. I want to  
4 first say that I really support what Rita  
5 said about title six and EEOA applying  
6 because this has been around since NCLB, and  
7 it's actually in the NCLB regs. And if you  
8 flip to page 17 it was actually in on the top  
9 of the page reading from my notes here it  
10 says the state must assess English learners  
11 invaluable and reliable manner that including  
12 reasonable accommodations that pretty much  
13 addresses a lot of what we were discussing  
14 this morning. Like it's been in the law  
15 since I'm not sure when the regs came out but  
16 it's been in the law for years, so finally  
17 like I think that it should continue to stay  
18 in the regs I think we went over it when we  
19 went over page 17 there didn't seem to be  
20 objection. If there was objection to keeping  
21 it in there I just like to give the Legal

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1 civil rights perspective that when I know we  
2 are dealing with rights like this federal law  
3 trumps concerns such as whether or not local  
4 law that is an English only law, and you know  
5 this sort of budgetary concerns that were  
6 discussed this morning. As an analogy let's  
7 say we are talking about accommodations for  
8 persons with a particular type of disability  
9 like a blind student that if a state passed a  
10 law or a locality passed a law that says we  
11 are not going to give accommodations to blind  
12 students that the IDEA and section 504 would  
13 just trump that as Rita mentioned title six  
14 equal education opportunity act would trump  
15 this as well, so I just wanted to make sure  
16 that perspective was said. I am happy to  
17 give my card to anyone who has any questions  
18 thanks for the opportunity.

19 Ms. Podziba: I am now going to go  
20 over next steps. First of all the  
21 subcommittee meeting, the subcommittee

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1 conference call is set for March 30, 2:30 to  
2 4:00 p.m. eastern daylight time. The  
3 Department will provide a call in number. I  
4 will send the call in information to all of  
5 you. Okay so it's everyone all committee  
6 members are invited to participate. The  
7 Department will also provide a resource  
8 person to the subcommittee to answer  
9 questions that arise during that call.  
10 That's the subcommittee 2:30 to 4:00 p.m.  
11 eastern daylight time. That's important  
12 because there's a state that doesn't switch.  
13 Okay. The next meeting is scheduled for  
14 April 6-8 beginning at 9 a.m., 9 a.m. to 5  
15 p.m. each day. You can expect to receive  
16 from me a draft summary of this meeting very  
17 brief not more than a page and a half just a  
18 very brief summary of our meeting and at our  
19 next meeting we will take any changes or  
20 revisions to it and then approve it and after  
21 you approve this summary it will be public

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1 document. I also send a draft agenda for the  
2 next meeting. The Department will send draft  
3 regulatory text. That will be reflective of  
4 the discussion that you had the last three  
5 days. Patrick, I don't know if you want to  
6 say any more about the draft regulatory text?  
7 No? Okay. That was easy. Okay so those are  
8 the next steps and what you can expect. Are  
9 there any other items?

10 Ms. King: I was wondering if we are  
11 all going to communicate either sort of in  
12 writing? Is it helpful to circulate words  
13 on paper for example for limited things about  
14 a definition of child and foster care or  
15 broader things about, hey, what if we did  
16 this? Is that appropriate or do we just wait  
17 until we get all back together again or in  
18 the event the Department gives us something  
19 to respond to are we going to respond to back  
20 and forth in writing or we all just going to  
21 meet again on the sixth.

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1           Ms. Podziba: It's not unusual and I  
2 think it can be helpful if you have proposals  
3 that you would like people to look at before  
4 the next meeting. If you send them to me I  
5 will distribute them to everyone. In terms  
6 of the Department's language given that our  
7 meeting is literally two weeks from today my  
8 hunch is there's not going people will get  
9 the regulatory text and they will be going  
10 through it so to get responses to it from  
11 other people I think just we will have  
12 limited use just because I expect people will  
13 be spending most of their time getting input  
14 from their constituents at this point.  
15 That's what everybody will bring back.

16           Mr. Hager: Just a clarification of  
17 that when the Department is going to have the  
18 text and share it we are allowed to share it  
19 with our constituency groups not general  
20 public is that the distinction or is it  
21 public or I know there was talk about public

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1 when we talk about our process?

2 Ms. Podziba: That's the draft  
3 summary isn't a public document until it's  
4 finalized. I believe all the documents that  
5 the Department circulates are public  
6 documents.

7 Mr. Rooney: We will make all of  
8 these documents publicly available on our  
9 website once they have been sent out to all  
10 of you they are public documents for all  
11 viewing.

12 Ms. Podziba: I am going to give you  
13 the floor to close the meeting.

14 Mr. Rooney: I will be brief. I know  
15 that's the last thing between our  
16 adjournments. I want to thank you all for  
17 very thoughtful and considerable comments. I  
18 appreciate everyone for sticking with us for  
19 three very full days of discussion. I am  
20 looking forward to coming back with some  
21 suggestions based on this conversation and

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1 continuing this conversation and in two  
2 weeks. I know that there's a lot of work  
3 before us and I really appreciate everyone's  
4 dedication and commitment to it. I look  
5 forward to seeing you all very soon. Thank  
6 you all.

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