Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 6, 2016

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

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U.S. DEPARTMENT OF EDUCATION

Negotiated Rulemaking

400 Maryland Ave. SW

Washington, DC

Elementary and Secondary Education Act Title

1, Part A Assessments and

Supplement Not Supplant

Washington, DC

April 6, 2016 9:03 a.m.

Court Reporter:

Kim M. Brantley, C.S.R.

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1 NEGOTIATED RULEMAKING COMMITTEE:

2 SUSAN PODZIBA, Facilitator

3 PATRICK ROONEY, Moderator

4 KAY RIGLING

5 DELIA POMPA

6 JANEL GEORGE

7 LIZ KING

8 RON HAGER

9 MARCUS CHEEKS

10 TONY EVERS

11 LYNN GOSS

12 REGINA GOINGS

13 RICHARD POHLMAN

14 ERIC PARKER

15 LARA EVANGELISTA

16 MARY CATHRYN RICKER

17 AUDREY JACKSON

18 RYAN RUELAS

19 KERRI BRIGGS

20 LISA MACK

21 RITA PIN AHRENS

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1 NEGOTIATED RULEMAKING COMMITTEE CONTINUED:

2 AARON PAYMENT

3 LESLIE HARPER

4 THOMAS AHART

5 DERRICK CHAU

6 ALVIN WILBANKS

7

8 ALSO PRESENT:

9 EXPERTS: PEGGY CARR, KENJI HAKUTA, MARTHA

10 THURLOW and KAREN HAWLEY MILES

11 and

12 JUDY BECKER, Technical Assistant

13 Office of the General Counsel 14 15

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1 MS. PODZIBA: If everyone could take
2 their seats.
3 I know that Audrey's on her way, and
4 Aqueelha's not feeling well, so she's going to
5 miss today and hopefully will be able to join us
6 tomorrow. And I know that Aaron is on his way.
7 Patrick I think as soon as Kerri's
8 settled, we can get started.
9 MR. ROONEY: Morning everyone. Welcome
10 back. I want to thank you all for joining us for
11 session two of the ESSA Negotiated Rulemaking
12 session.
13 Before we get started, Leslie wanted to
14 say a blessing before we begin.
15 (Leslie Harper says blessing in
16 Ojibwemowin language.)
17 MS. HARPER: I thank you folks, and
18 again we just took that in the spirit of the land
19 on which we stand and in the spirit of helping us
20 all to work together in what is affecting all of
21 our communities and all of our families across

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1 this whole country. I just ask them all to help
2 us get home safely.
3 MR. ROONEY: Thank you for that,
4 Leslie.
5 So, again I want to welcome you all
6 back and thank you all for being here today and
7 for the next two days, and I also want to thank
8 you for the first session. All the comments, and
9 the questions and the discussion we heard was a
10 really rich discussion, and we've been spending a
11 lot of our time in the last week and half since
12 then trying to think about how to incorporate the
13 comments and questions we heard into the proposals
14 that we provided to you late last week for our
15 discussion -- to start the discussion that we're
16 going to have today, tomorrow and Friday.
17 I did want to say a couple of things
18 before I turn it over to Susan to help with the
19 agenda for the day.
20 First, I think a lot of the discussion
21 we heard was very helpful, a very rich discussion,

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1 and a lot of it was about some of the operations
2 around how states do some some of the things, the
3 topics that were discussed and the questions that
4 we raised. I think, looking back on that
5 discussion, I wanted to help maybe set the frame
6 to help us think about our work today, tomorrow
7 and Friday.
8 I think we tried to address a lot of
9 your comments. I think some of the questions and
10 discussion we had, because they do get into more
11 operational types of questions, we're trying to
12 think whether that makes sense for something to
13 include in regulations or something that can be
14 captured another way through guidance or technical
15 assistance. And I think I just wanted to
16 highlight I think, regulations are requirements
17 for states, where we're trying to set the
18 expectations and requirements for what states need
19 to do to comply with in the ESSA. Some aspects of
20 the discussion last time and I think probably the
21 discussion we're going to have over the next three

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1 days is thinking about how would a state
2 operationalize, what are those requirements? And
3 that may be something that it makes sense to
4 clarify in the regulations that we're going to
5 discuss, and it may be something that makes more
6 sense to think about as guidance that states, or
7 the Department, in thinking about how to
8 operationalize that.
9 I'd ask you to think about that frame
10 as you're thinking about the draft language and
11 how we could strengthen it and pull it together
12 and kind of come to a consensus.
13 The second thing I wanted to mention,
14 based on all that discussion, we created draft
15 language for discussion today that we're going to
16 go over today, tomorrow and Friday. The language
17 is designed just to use a starting point for the
18 discussion, and we are really looking forward to
19 the discussion about that language. After all
20 we're here to have discussions for how we can try
21 to improve it and strengthen it and change it to

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1 make sure it does capture what we're trying to set
2 out and meet.
3 We did try to incorporate as much of
4 the comments and discussion that we could from the
5 first session. It also represents the
6 Department's priorities for what we think we
7 should focus on to try to strengthen the focus on
8 equity and the law, which is the focus of ESSA,
9 and we hope that in the next three days we will
10 have a very productive and constructive
11 conversation and we can move towards consensus to
12 get strong regulation that that can help us
13 implement ESSA and provides clear direction to the
14 states and to the districts and schools in the
15 field.
16 We're very interested in trying to get
17 consensus and working together to try to create
18 the best school possible, and I'm just excited
19 about for the discussion. I'm sure you'll have
20 lots of great suggestions for us.
21 With that, I'm going to turn over to

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1 Susan now.

2 MS. PODZIBA: Thank you, Patrick.

3 MS. AHRENS: Quick question. Some of

4 our advisors are not being allowed in. I was just

5 texted by my advisor that he's not being allowed

6 into the meeting. They're being told it's not

7 open for the public?

8 MS. RICKER: She's saying there's a

9 protocol.

10 MR. ROONEY: We sent someone to the

11 front door to make sure that they know that is not

12 nice.

13 MS. BRIGGS: Thank you.

14 MS. PODZIBA: Now that we have that

15 straightened out, I was wondering why it was so

16 empty here. I thought all the controversy came

17 out already.

18 So, I just want to walk through the

19 agenda real quickly. So, in just a minute we'll

20 look at the draft summary of our last session and

21 make any revisions to it in order to approve it.

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1 Then we'll go through the discussion of
2 issues and draft regulatory language, and you'll
3 see that we sequenced the issues a bit differently
4 this time, and the reason we did that was because
5 it seemed that, if we do issues such as four and
6 five before we do Issue One, we may avoid some of
7 the confusion that we had at the last meeting.
8 So we tried to sequence the issues in
9 an order that would make our discussion more
10 productive. So we'll see if that works. That's
11 the reason for that. So we will go in the order
12 that's listed on the agenda.
13 As we get into Issue Four, we'll have a
14 report out from the subcommittee, and Ron will do
15 that for us.
16 As usual, we will have time for public
17 comment each day, and there will be a public
18 comment sign-in sheet.
19 Towards the end of our last day
20 together, we'll kind of take a look at where
21 things are and have some discussion about an

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1 optional meeting on the 18th and 19th, but we'll
2 know more about that when we see where things
3 move. And then of course next steps at the end of
4 the meeting.
5 Any questions about the agenda?
6 Liz?
7 MS. KING: So, when we're getting to
8 the point about reaching consensus, is the idea
9 that we're going to sort of postpone all of those
10 until Friday, or are we going to go issue by issue
11 and seek consensus on each sub-issue?
12 MS. PODZIBA: So, what we'll do is
13 we'll try to reach tentative agreements on the
14 issues, but we'll only see if there's final
15 consensus at the end.
16 So, the idea is you didn't through --
17 if we can reach a tentative agreement, then we
18 know we don't have to come back to it again. But
19 if there are sections of issues that are
20 outstanding, we'll want to have a few more passes
21 through those.

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1 I'll go into more detail as we get to
2 that.
3 Any other questions about the agenda?
4 MR. HAGER: People are coming in.
5 MS. PODZIBA: Alright, great.
6 So, I'd ask you to take the meeting
7 summary out, the draft meeting summary. And are
8 there any comments or questions or proposed
9 revisions to it?
10 I know you all studied it carefully
11 before you got here. Is there any dissent from
12 approving this as our summary of meeting one?
13 Delia?
14 MS. POMPA: This is a high-level
15 summary. How are the comments that were made by
16 the different participants, the different members
17 of the rulemaking team recorded, or are they
18 recorded in any way?
19 MS. PODZIBA: There will be a
20 transcript. There's a transcript being kept. We
21 have someone present who is recording all of that.

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1 But I think it's going to take some
2 time for those to become available.
3 MS. POMPA: That's fine. I just didn't
4 know. Thank you.
5 MS. PODZIBA: Alright. Is there -- oh,
6 Lynn?
7 MS. GOSS: Just one other quick
8 questions on the members present. Just to
9 distinguish which ones are voting and which ones
10 are nonvoting?
11 MS. PODZIBA: Right, so I just went
12 according to the protocols which calls everyone
13 "members," and then in the protocols identifies
14 alternates as not having a right to dissent.
15 Other questions about the summary?
16 Ok. Is there any dissent from
17 approving the summary?
18 Ok. Thank you.
19 Alright, so we're at the point of going
20 through the regulatory text, and I just want to
21 say a little bit, Liz, you kind of segued me into

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1 that about what it's going to look like for the
2 next few days.
3 So, we're going to go through each
4 issue with the goal of reaching tentative
5 agreements where we can and identifying
6 outstanding issues where we don't.
7 So, we'll be what I call working the
8 issues, and what that means is, where there are
9 concerns, we'll be trying to break down and
10 identify very specifically what those concerns are
11 in the hopes that everybody will work together to
12 figure out ways to resolve those concerns. And
13 when the discussion starts to get repetitive, I'm
14 likely to say, let's pass on that for now and flag
15 it as an outstanding component of an issue.
16 So, I'm expecting, particularly because
17 there's a lot of statutory language in much of the
18 regulatory text, that there will be particular
19 sections as opposed to a whole issue that may need
20 further attention.
21 So that's what we'll be doing together.

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1 So I just also want to say a little bit
2 about what moves people towards consensus
3 generally, right? So, I expect all of you signed
4 up for this and identified or were nominated,
5 because you came here to represent the interests
6 of your constituents, and I expect that you define
7 what I would refer to as enlightened self-interest
8 differently from each other.
9 So, some of you may be here to get more
10 for your constituents than others. Some of you
11 may be here to protect your constituents from the
12 "more" that other people are trying to get. Some
13 of you may hope that you can get more in another
14 forum, so, not reaching agreement might be your
15 kind of best alternative. But some may focus on
16 the certainty that an agreement affords, right?
17 So, here we are where you have an
18 opportunity to decide and help decide what's in
19 the regulation, whereas if there's no agreement
20 the Department would write it in the way that it
21 wants with the input from throughout the

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1 Department.

2 Some people will want the regulations

3 for the certainty of compliance, so one of the

4 things that regulations do is it makes very clear

5 what it takes to be in compliance, to create those

6 clear lines of activity that need to define

7 compliance, which then also avoids the potential

8 confusion about activities that are not clearly

9 outlined in the regulation.

10 So, those are some of what I see as

11 kind of the forces that contribute to consensus,

12 and of course all in the context of trying to

13 reach the public goal that's intended by the law,

14 which is what constrains what's possible here.

15 So with that introduction to consensus

16 building, I will turn it to Patrick to get us

17 started on the issues.

18 MR. ROONEY: Thanks, Susan.

19 So, before we get started I just want

20 to do a couple of reminders, and then we're going

21 to jump into Issue Paper Two.

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1 So, I want to again thank everyone for
2 all of your conversation last time. We spent a
3 bit of time, particularly when we were on Issue
4 Paper Six, going through the very weedy details of
5 the regulations. We're going through that even
6 more as you can see from the issue papers we sent
7 you for your consideration for the suggestion
8 today. So, I certainly want to thank you for
9 that.
10 But first, I do want to remind you of
11 how we tried to label the regulations, the
12 proposed regulations that we created. Our
13 committee has helped identify where the language
14 came from, although I realize it's also a little
15 confusing.
16 So, to remind you, the black text in
17 any of the issue papers is text that existed in
18 our current assessment regulations.
19 The blue text is language that we took
20 from the ESSA, from the statute.
21 There are some places where things are

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1 bolded in blue and you'll see those throughout.
2 There's nothing actually on Issue Paper Two, but
3 you'll see them in some of the other issue papers.
4 Those are updates that we made where we had
5 something either mischaracterized or incorrect in
6 the language we pulled from the ESSA. And some of
7 that we flagged in the last discussion, and I
8 think Audrey had a good example when she looked at
9 Universal Design, she realized it should be
10 Universal Design for Learning in 200.2 I think is
11 where it was. But we updated that to make sure it
12 said Universal Design for Learning in connection
13 with the statute.
14 And there were other examples people
15 caught. When we went back through and were trying
16 to draft discussion topics for all of us for
17 today, we caught some other areas where things
18 were not quite right in the language that we
19 pulled, so we corrected that. And where we did
20 that, we bolded it so it would be clear that that
21 was something different from what you saw the last

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1 time.

2 And then the red text is language that

3 we have posed for our discussion that we think

4 helps clarify something that's in the statute.

5 That is the distinction between the three

6 different colors that you'll see in all the

7 issues.

8 Second, I wanted to introduce Judy

9 Becker, who's sitting behind Susan. She is in the

10 Office of General Counsel. She or one of our

11 colleagues from our Office of General Counsel is

12 going to help facilitate our discussion by

13 actually taking notes on her computer, which will

14 be up on the screen. Hopefully everyone can see

15 one of the screens. As we go through the issue

16 papers, she will help try to place in the text

17 where there seems to be some discussion of things

18 we want to clarify the language, so all of us can

19 see what that might look like in the text.

20 It won't be exactly real time editing,

21 but it will be close to real time editing, which

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1 will help us see what the proposed change may look
2 like. I think our concern is that it may start to
3 get very technical quickly, and the language may
4 get confusing to us, so we will have a draft it.
5 So Judy is going to be the one that is going to do
6 that for us.
7 On each issue paper, just to remind
8 you, there is a background and then there are
9 discussion questions. None of that has changed
10 from the last time. The only thing that we
11 focused on was the session to update at the
12 bottom, where either we changed the language we
13 had for you the last time in light of the
14 discussion, or based on the discussion we proposed
15 language for you to consider for the first time
16 today, tomorrow and Friday.
17 So that's the area that is different on
18 each issue paper, and that's where we're going to
19 focus our attention in the discussion.
20 Third thing I wanted to say, before we
21 break into the issue papers, is that we do have

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1 the experts from the first session -- Peggy Carr,
2 Martha Thurlow and Kenji Hakuta -- on call, so to
3 speak, for us if we have questions, and Karen
4 Miles or someone from her organization for the
5 Supplement Not Supplant when we get to that issue
6 paper.
7 We are not going to have them sit at
8 our table. I think if we have questions that we'd
9 like one of the experts to weigh in on, I think
10 we're going to ask that we just just create a
11 parking lot for those questions, and find a great
12 time for a break to try to find a way to get
13 answers to those questions. So we will try to
14 group them together to the extent we can, or to
15 the extent it makes sense.
16 I know Kenji and Martha in particular
17 are going to be coming and going because they've
18 got other meetings around town with the ARA this
19 weekend. So they will be in for part of the time,
20 but I think for the purpose of our discussion it
21 would be good for us to just kind of put a parking

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1 lot for those questions that we have when they
2 come up, and then we will try to find a way to
3 address them if we need them to address those
4 questions.
5 The one other thing I wanted to say.
6 On Issue Paper Six, we provided two versions of
7 the full regulation. There is what I will -- and
8 using not typical terms, but what is the messy
9 version and then there is the clean version.
10 Probably you saw that when you went through it.
11 The messy version is very similar to
12 the one you looked at last time. It includes all
13 of the issue paper language in one place. And
14 then the clean version takes out all the
15 strike-throughs, and so it's just what the
16 regulation and the proposed regulation would look
17 like. We took all the language that's in either
18 the ESSA pieces or the five issue papers, one
19 through 5B.
20 There are some pieces that are not
21 included in the issue papers that are only

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1 included in Issue Paper Six, and we can talk about
2 those once we get to Issue Paper Six. But there
3 are two versions.
4 As we talked about last time, there's a
5 lot of cross-references in the draft regulations
6 with any issue papers, so there may be a need for
7 us to go back and forth between Issue Paper One
8 and Issue Paper Six to kind of show what the
9 citation may look like. So, we will try to flag
10 that for you if that's that case.
11 We added line numbers to Issue Paper
12 Six to help with the discussion, so hopefully it's
13 a little easier to try to find the citation that
14 we're talking about when we're referencing Issue
15 Paper Six.
16 Susan, was there something --
17 MS. PODZIBA: The matrix.
18 MR. ROONEY: Oh, and another
19 clarification, or the other piece we added -- I
20 think we left it on the tables. I don't believe
21 it's in the binders -- is the matrix. It should

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1 have been on your desk, just the Issue Paper Six
2 matrix. I think Ron's holding it up. Thank you,
3 Ron.
4 MR. HAGER: It's kind of like a cheat
5 sheet?
6 MR. ROONEY: Yes, a cheat sheet.
7 That's a good description of it.
8 And the intent with the matrix is to
9 help provide a reference of where the language in
10 Issue Paper One shows up in Issue Paper Six, or
11 where the language in Issue Paper Two shows up in
12 Issue Paper Six; both the messy, the red-line
13 version, and the clean version, so you can see
14 which version you want to look at where you can
15 find it. When you get rid of the strike-throughs,
16 the language could change a little bit.
17 Any questions on that before we jump
18 into the issue papers.
19 MS. PODZIBA: Yes, Richard had a
20 question.
21 MR. POHLMAN: My only question is have

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1 any of the papers in any way changed since they
2 were sent or publicly posted? I've got a
3 different set of copies than are what were on the
4 table this morning. I've got lots of things on
5 them I'd like to use.
6 MR. ROONEY: There are no changes. So
7 the version we sent on Friday, that's the version
8 we're going to discuss.
9 MS. PODZIBA: Ron?
10 MR. HAGER: Kind of related to that,
11 when we go through the issue papers, are we going
12 to be looking at the language on the issue paper,
13 as opposed to under Issue Six? Because I did the
14 same thing. I put my notes in the issue paper.
15 Or are we going to go back and forth a little bit?
16 Do you understand what I'm saying?
17 MR. ROONEY: Yes, I understand. So our
18 plan will be to go through the issue papers and
19 spend our time in the discussion on the language
20 in the issue papers and reference Issue Paper Six
21 only to the extent that in Issue Paper Two, you

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1 know, we referenced 200.6, it's helpful to know
2 what that reference is, we can go to 200.6 in
3 Issue Paper Six, so you can see it.
4 But, we want to focus the discussion,
5 and Judy is going to be editing the language in
6 the issue paper itself and see we can come to a
7 tentative agreement on the language.
8 So here we go. Issue Paper Two is the
9 first one we're going to discuss, and it's the
10 Exception for the Advanced Mathematics in Eight
11 Grade.
12 The proposed language we have for you
13 guys on this issue paper is really not any
14 different than the language we shared two weeks
15 ago. This is primarily the same with a couple of
16 very small changes, and as a reminder our intent
17 for this section is to create regulations that
18 match the requirements in the statute in the ESSA
19 around permitting students to take advanced math
20 courses in eighth grade and that they not be
21 double-tested; that they not have to take the

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1 state's eighth grade test and the state's
2 End-of-Course Test, that they can just take the
3 End-of-Course Test as aligned with the content
4 they're actually taking in eighth grade.
5 There are two aspects that we want to
6 make sure that we're considering in the
7 regulation. The first is, because the test that's
8 given to students in high school in place of the
9 test they're taking in eighth grade, they have to
10 take a higher course and higher test in high
11 school, because that test then gets used in the
12 state's accountability system, we want to make
13 sure that that test is a high quality test that
14 meets acceptable professional standards for the
15 quality of the test be used in the accountability
16 system.
17 Second, we want to make sure that the
18 flexibility doesn't provide benefit to some
19 students and not others simply because of what's
20 offered in their school or where their school is
21 located, that we want to really think about the

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1 quality of opportunity within the context of this
2 permission.
3 So, there are a few minor changes that
4 I want to point out. The first is we removed,
5 and you can look on line three of the draft text,
6 or lines two and three, we removed the e.g.s,
7 "e.g. Algebra 1, geometry and Algebra 2." I think
8 that was a discussion actually Tony had last time
9 that it was unnecessary and it kind of focused us
10 on a particular way of looking at the first test
11 that maybe was not helpful or necessary within our
12 regulations.
13 Second, we kept in the expectations
14 from the ESSA that students take a different
15 statewide End-of-Course test in high school than
16 they took in eighth grade, and we also added, and
17 you can see this down under romanette i, about a
18 little more than two-thirds of the way of the page
19 down, that we added the permission for states to
20 include not just a state-administered
21 End-of-Course test but also a

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1 nationally-recognized high school assessment.

2 We will talk about that proposal, the

3 definition of what a nationally-recognized high

4 school assessment is in Issue Paper Three. I

5 don't know that we want to discuss that here. I

6 think we can discuss that at Issue Paper Three.

7 Then we also proposed requiring that

8 the state submit the additional statewide

9 End-of-Course Tests for the peer review process

10 the Department runs for all state assessment

11 systems. And you can see that we changed the way

12 this was done.

13 Oh, right. So, if you look on Page 3,

14 the crossed out section number four, that's struck

15 through, that was in there previously for the

16 discussion we gave you. We revised how we did

17 this in light of a lot of the discussion we had

18 about peer review, so this is a place where we can

19 work on our cross-referencing. It's actually on

20 200.2(d), which is, if you go to the red-line

21 version of Issue Paper Six, if you want to look at

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1 what this language looks like, it's on Page 5, the
2 very top, starting with Line 1, where we clarify
3 that a "state must submit evidence for peer review
4 of state assessments," and we clarify what
5 assessments have come in for peer review, and the
6 first citation on line three is 200.3, formally
7 200.5(b), which is the part of the regulation
8 we're looking at.
9 So, this was part of a discussion we
10 had in the last meeting where I think there were
11 some suggestions that we be very clear about what
12 assessment tests have to come in for peer review,
13 and the regulations actually can it not specify
14 that within our assessment regulations. So we
15 tried to clarify that.
16 The assessments, all the assessments
17 we're going to discuss have to come in for peer
18 review, including the requirement -- or the
19 permission in 200.5(b) to have the students take
20 the high school test in eighth grade and then take
21 a higher level math course and test in high

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1 school; that those suggestions were for the
2 mandatory period.
3 So, that may be a good stopping point.
4 I know that there are a couple of questions that
5 have been raised.
6 There are further aspects that I talked
7 about last time, or I think we can talk about
8 separately.
9 MS. PODZIBA: Patrick, I don't know if
10 everybody knows where the 200.5 is. Where is it
11 referenced in this reg text?
12 MR. ROONEY: So this is 200.5(b).
13 That's maybe that's my confusion, sorry. If you
14 look on Issue Paper Two, it starts with little
15 letter B.
16 MS. PODZIBA: Right.
17 MR. ROONEY: So, it will fit in
18 200.5(b). If you want to see it on the full
19 red-line paper, it actually starts Page 10, on
20 line 40.
21 MS. PODZIBA: Ok. Just to clarify.

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1 MR. HAGER: We're having trouble
2 finding in our red-line where you are. Is it the
3 bottom of Page 4 on the red-line version, B?
4 MS. PODZIBA: So again, if you look at
5 the matrix, it's Page 10, Line 40. That's where
6 Issue Two starts in the package.
7 And Patrick, it may be helpful to refer
8 to this as the "package," because --
9 MR. ROONEY: Ok.
10 MS. PODZIBA: Because it has
11 everything, not just the Issue Six items.
12 MR. HAGER: He was talking about
13 200.5(b). It's 200.2(b). I just wanted to --
14 that's the bottom Page 4?
15 MR. ROONEY: So, sorry, I think I was
16 looking at a different version.
17 So, if you want to look at the language
18 in the issue paper, it starts on Page 10 Line 40.
19 That's where it's the Middle School Math
20 Exception, which is 200.5(b). All of the text
21 below, Page 10 and then Page 11, is what you see

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1 in the Issue Paper Two.

2 If you want to see the reference to the

3 peer review, it's in 200.2(d), which appears on

4 Page 4, starting on Line 46.

5 And where it references 200.5(b) is

6 actually Line 1 of Page 5.

7 MS. PODZIBA: I'm sorry, I may be

8 missing something. Where is the citation that

9 you're referring to for peer assessment in this

10 issue paper?

11 MR. ROONEY: So it's not in the issue

12 paper.

13 MS. PODZIBA: Ok.

14 MR. ROONEY: Sorry. It's covered in

15 200.2, which says "all tests have to come in for

16 peer review," including the test in 200.5(b),

17 which is what we're discussing now.

18 It's not in the issue paper because

19 it's not covered globally in the beginning of the

20 assessment.

21 MS. PODZIBA: Ok.

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1 MR. ROONEY: In the package.

2 MS. PODZIBA: Ok, so if I understand

3 correctly, the discussion is essentially on what

4 we have on the issue paper on Page 2. Is that

5 where we should be focusing?

6 MR. ROONEY: Yes. I just wanted to

7 clarify that change in the regulation is then

8 referencing 200.2.

9 MS. PODZIBA: Ok.

10 MR. ROONEY: So it will get a little

11 bit easier. I'll get a little bit better at that.

12 MS. PODZIBA: I think everyone will.

13 I'm going to open the floor for

14 discussion.

15 Liz, I think you were up first.

16 MS. KING: I just had a question about

17 the term "state administered" and wanted to ensure

18 that that meant statewide.

19 Do you want me to say where that is?

20 So this is 200.5(b) iii: "In high school the

21 student takes a state administered End-of-Course

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1 assessment or nationally-recognized academic
2 assessment, as defined in 200.3(b)."
3 MR. ROONEY: I think under
4 state-administered we didn't necessarily mean it
5 would be a statewide test that all kids took, but
6 it would be a state --
7 MS. KING: Right, sorry --
8 MR. ROONEY: It would not be a locally
9 developed assessment. It would be a state
10 assessment.
11 MS. KING: Right, my understanding is
12 it would be the same assessment for all students
13 under this exception. So every child who is in
14 eighth grade taking the high school test would
15 then take the same test in high school as all of
16 the other children who in eighth grade took the
17 high school test.
18 So it's statewide in that it only
19 applied to the children covered under this
20 exception.
21 MR. ROONEY: I don't think it would

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1 have to be the same state-administered test. So
2 you could assume -- you could imagine, I think,
3 that an eighth grader who takes takes Algebra 1,
4 and that's the high school test in the state, they
5 take Algebra 1 in eighth grade, that when they get
6 to high school, some of those kids could take the
7 state geometry test; some of them could take the
8 state Algebra 2 test. That there would be --
9 states would have a little bit of discretion, but
10 it would have to be a state assessment, or a
11 nationally-recognized assessment. Some kids could
12 take the SATs; some kids could take the ACTI.
13 MS. KING: Yeah, ok. No, I think that
14 that makes sense terms of affirmative
15 administrative perspective. I was just trying to
16 find out what the language meant. So I'm
17 comfortable with that interpretation. I don't
18 know if it needs more words, but I hear what
19 you're saying. So I'm comfortable with that.
20 MS. PODZIBA: Richard.
21 MR. POHLMAN: So I want to focus on this

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1 language in 3 sub i (a) of "more advanced than the
2 assessment". I think that it has brought up for
3 me questions about course sequencing, but also
4 about the fact that the SAT or ACT isn't
5 necessarily a more advanced assessment than a
6 subject-specific geometry or subject-specific
7 Algebra 1. It merely tests different things, and
8 I think the inflation of "more advanced" and
9 "different" here could lead to some confusion, and
10 I wonder if there's other wording that we could
11 work on, you know.
12 LEA states, others have flexibility in
13 their course sequencing, and I think we need to be
14 sensitive to that in the regs, and I don't think
15 its entirely clear what is meant by "more
16 advanced". There's a definition --
17 MR. ROONEY: I'm open to discussion
18 about it. That's from the statute directly and
19 that's the point of regulations to clarify where
20 things could be clarified. So I'm open to other
21 discussion or if you have language to propose.

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1 MS. PODZIBA: Richard, do you have an
2 alternative?
3 MR. POHLMAN: I will work on one.
4 MS. PODZIBA: Ok.
5 MR. POHLMAN: I don't have anything that
6 I especially like. So if there's others in the
7 room that could help with that on the statute of
8 drafting right now, that's fine.
9 MS. PODZIBA: Kerri.
10 MS. BRIGGS: I appreciate the 200 point
11 whatever where you're listing out all of the
12 things that are going to be submitted for peer
13 review.
14 I don't know that this needs to be
15 added in. I mean, my read of this exception is
16 that it's not a different test than what the state
17 is already going to be submitting for high school
18 peer review. Right? They're just taking the
19 sequencing different.
20 So, it's not like, the examples, it's
21 not like the Algebra 1 test they might take, or

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1 the geometry 1 test they might take, but something
2 outside of the system.
3 Does that make sense?
4 MR. ROONEY: So, I will clarify that.
5 I think it would be different. Right
6 now states have to submit their tests in grades
7 through three, and then one test in high school.
8 So, in this hypothetical situation, a
9 state would say, our tests are -- the tests we
10 have in grades through three and our Algebra 1
11 test is what we give in high school. Or in this
12 example say Algebra 1. If they then give Algebra
13 1 you to eighth graders, they then have to have a
14 different test that they give or that kids can
15 take in high school, and they would not
16 necessarily submit that for peer review because
17 they don't have to have more than one test in high
18 school law unless they're taking advantage of this
19 permission in the statute.
20 MS. BRIGGS: Just on Richard's
21 question, I think defining more is something you

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1 would put in guidance and regulation, and not
2 statutory language. I get the point, but I call
3 that -- I'll stop.
4 MS. PODZIBA: Ok, Tony?
5 MR. EVERS: One quick point of
6 clarification on Page 2, right at the beginning.
7 It says "A state that administers an End-of-Course
8 math assessment," blah, blah, blah. So, this
9 particular regulation rule part of the law only
10 applies to those states that have an End-of-Course
11 exam? Do we know how many still do?
12 MR. ROONEY: I don't have those
13 numbers. It's not that many. Most states waive
14 the End-of-Course tests. It's probably about ten.
15 MR. EVERS: Thank you.
16 First of all, getting kids into higher
17 levels of mathematics is great. Sooner or later I
18 hope we find ways to do math a little better in
19 this country, and frankly -- and this is not an
20 issue for this committee but for Congress --
21 really, there's correlation around this issue but

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1 there's no causation around this issue. So
2 there's not a lot of research that supports some
3 of this.
4 But anyway, in three I, it talks about
5 "state-administered" and "course assessment". In
6 the addition of nationally-recognized high school
7 academic assessment, so on and so forth, I don't
8 think it's particularly helpful. I mean, first of
9 all I'm not sure that's with Congressional intent,
10 but that's for other smart people to figure out.
11 But I just think that leads us into an
12 area that there's going to be much more
13 discussion, and I would agree with Kerri that it
14 should be that piece that's taken up by Guidance.
15 I think it's better placed there.
16 I have some question about the next
17 phase, but I'll hold that.
18 MS. PODZIBA: Is there a discussion of
19 Tony's point about nationally-recognized high
20 school academic assessment as defined in 200.3?
21 MS. JACKSON: Can I ask him a

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1 clarifying question?

2 MS. PODZIBA: Sure.

3 MS. JACKSON: Could you just clarify

4 what you meant, what you were referring to when

5 you were talking correlation and not causation?

6 You said "on this issue," and I just want to be

7 clear --

8 MR. EVERS: Yeah, just on this issue in

9 general.

10 MS. JACKSON: What about?

11 MR. EVERS: Well, there's not much

12 research here to sustain that there's a causation

13 issue between kids taking a higher level of math

14 in middle school and being successful at college.

15 MS. JACKSON: Ok, thank you.

16 MS. PODZIBA: Liz, do you have a

17 comment on Tony's comments?

18 MS. KING: Yes. I wanted to sort of

19 get a better understanding, Tony, of what you were

20 saying.

21 My concern is that, if your intention

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1 is that the national high school assessment
2 shouldn't count, which I think arguably you could
3 make that case, then the distinction between
4 regulation and Guidance, right, if it shouldn't
5 count in the reg then it shouldn't not also count
6 in the Guidance? So, it seems like there's a
7 policy question there about -- I haven't really
8 thought about it, so I don't have a strong thought
9 on it one way or the other about whether it should
10 be an option or not. But I just wanted to get
11 some clarity on that.
12 MR. EVERS: Yeah, and this goes to the
13 discussion that we will have about this issue, but
14 as far as the state's responsibility to vet, in a
15 very minor term, but essentially to say that this
16 test is alright, I think that's really complex
17 work. I mean, you don't have the ability to do
18 it. So I just think it's a better Guidance
19 technically, technically assisted. I'm not
20 opposed to having it be simply more than an
21 End-of-Course exam, although I would suggest

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1 Congressional intent was pretty clear on that,
2 This is what it said, and expanded it to beyond,
3 This is what it said, I'm not sure is particularly
4 helpful.
5 So there's two issues there.
6 MS. PODZIBA: So, Tony, just to be on
7 the language, is your proposal to strike
8 "nationally-recognized high school academic
9 assessment" as defined in 200.3(d)?
10 MR. EVERS: Yes
11 MS. PODZIBA: Ok. Lynn, is your
12 comment on this issue?
13 So, what I'm going to doing is trying
14 to get an issue dealt with and then move on to the
15 next person for the new issue.
16 MS. GOSS: If I'm an eighth grade
17 student and I'm taking Algebra 1, so then at the
18 end of the year, then when I'm an eighth grader
19 take the other assessments, so the state test
20 actually has other tests that go with that, so
21 you're in that whole process, and then you're

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1 going to take then, if you use a test at the high
2 school, so then you're actually creating more
3 chaos, as well, as far as more testing. So,
4 because if you chose the ACT test, that tests more
5 than just math.
6 MS. PODZIBA: I don't have the answer
7 to that question, but maybe someone else might.
8 MR. ROONEY: Sorry, can you clarify the
9 question, Lynn?
10 MS. GOSS: When you're talking about
11 just a course work, so, when you're doing the math
12 and then you're talking about a
13 nationally-recognized test, I'm not aware that you
14 can just pick and choose portions of the ACT test
15 apart. You take the whole ACT test, which is
16 all-inclusive of more than just math.
17 MR. ROONEY: Right. So that ACT would
18 be reading, math and science, and the SAT, that
19 would just be reading and math.
20 MS. GOSS: So, this is just addressing
21 the math, so that could lead to more overtesting

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1 because they're being assessed for reading and the
2 social studies and the science at the eighth-grade
3 level, and then they're assessed at the nationally
4 or whatever is determined at the high school level
5 in eighth grade.
6 MR. ROONEY: That's true. I see your
7 point now. Thank you for clarifying.
8 MS. GOSS: I'm just asking if that's
9 what's the intent was.
10 MR. ROONEY: I think in practice it
11 wouldn't lead to more testing, because most of the
12 kids who are taking advanced math courses in
13 middle school are likely already taking the
14 nationally-recognized assessment, if it were SAT
15 or ACT, that they're probably taking one of those
16 two things in high school.
17 I don't know that in practice it would
18 lead to more testing, but I don't have any data
19 that would say that that's true or not, that
20 presumption.
21 Sorry, are you asking about whether

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1 they take the SAT or ACT in eighth grade? Because
2 they would take that in high school. At some
3 point in high school, the kids who take the high
4 school End-of-Course Test in eighth grade, at some
5 point in high school they would have to take a
6 higher-level math test, whether that was another
7 statewide End-of-Course Test or the
8 nationally-recognized assessment.
9 So, it could be at some point between
10 grades nine and twelve.
11 MS. PODZIBA: Ok, so still on the
12 proposal to delete "nationally-recognized high
13 school academic assessment" as defined in
14 200.3(d), Liz, did you have a comment on that?
15 MS. KING: Yeah, I just wanted to agree
16 with Tony. I think he's right.
17 And then also to Lynn's point, I think
18 it creates confusion because of the structure of
19 the nationally-recognized assessment. There's a
20 different level of state discretion about whether
21 or not the state chooses to have one of these, and

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1 then also it is LEA wide.

2 I think Lynn is right in that we would

3 have a high school student who would then, either

4 for the purposes of their high school

5 accountability, be taking just the math part of

6 some other assessment that no one else in the LEA

7 is taking, in addition to taking the ELA and

8 science portion of the statewide assessment that

9 everyone else in their LEA is taking, or they

10 would be taking both the nationally-recognized

11 assessment, ELA and science, as well as the

12 statewide ELA and science in high school.

13 So I think it does create a confusion

14 that I think is not helpful.

15 MS. PODZIBA: So, did I understand you,

16 you're supporting that proposal?

17 MS. KING: Yeah.

18 MS. PODZIBA: Ok. Is there anybody who

19 does not support the proposal to delete that?

20 MS. RICKER: Could I just get a

21 clarification --

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1 MS. PODZIBA: Yes.

2 MS. RICKER: -- as to what it would

3 read as?

4 No, I got it, ok. I didn't notice t

5 other screen there.

6 Thank you.

7 MS. PODZIBA: Is there anybody anyone

8 who would not support that deletion?

9 Kerri?

10 MS. BRIGGS: No, it's not that I don't

11 support it. I just want to understand the

12 implications...

13 So, in eighth grade I take Algebra 1.

14 I get to tenth grade. My district decided to do

15 ACT. That means I'm taking ACT and geometry.

16 Is that what that means?

17 MR. ROONEY: Yes, that's what that

18 would mean.

19 MS. PODZIBA: Mary Cathryn?

20 MS. RICKER: Thank you.

21 Is the unintended consequence of this

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1 then that a state would have to develop an
2 End-of-Course assessment? I'm just trying to
3 understand the language as it is right now.
4 MS. PODZIBA: Tony?
5 MS. RICKER: Or intended consequence.
6 MR. EVERS: The only states that this
7 applies to are those that have End-of-Course
8 exams, or can get one. So, I think we can
9 probably assume that there is something at the
10 high-school level.
11 The very first sentence in this rule
12 says, "a state that administers End-of-Course
13 mathematics assessment" and whatnot. So that
14 limits this whole thing to those ten or eleven
15 states that do that. And if you have
16 End-of-Course exams, it's likely you would have
17 some End-of-Course exams in high school. In fact,
18 that's where most End-of-Course exams are.
19 So whether that's good or bad, I mean,
20 frankly I hate End-of-Course exams, but for those
21 states that have them, God bless them.

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1 And then that further is amplified in
2 3(i) where the Department, through I guess our
3 input, says if a student takes a
4 state-administered End-of-Course exam, and as
5 Patrick talked about, that would be something that
6 may be administered to everybody, but the state
7 developed it and has it available to school
8 districts.
9 I don't know if that helps.
10 MS. PODZIBA: Does that clarify or do
11 you need some more information?
12 MS. RICKER: I'm just trying to walk
13 through a student experience right now. And so,
14 maybe it would be better if Tony, if you could
15 even walk through a hypothetical student
16 experience.
17 So, I have a student who is taking --
18 For a student who is in a grade-level
19 math course, there is, like those students are not
20 affected by this language. So at this point we
21 are talking about a student who is in what the

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1 state would consider an advanced course, or to
2 Richard's point, you know, whatever the other
3 language might be, an advanced course in eighth
4 grade, and, so, then my question is, at some
5 point, and then maybe this gets back to Lynn's
6 question, at some point have they skipped an
7 assessment?
8 MS. KING: Yes.
9 MS. RICKER: At some point are they
10 double-assessed?
11 MS. KING: They never take the Eighth
12 Grade Math.
13 MS. RICKER: So, in eighth grade, they
14 will never have an Eighth Grade Math Test
15 recorded?
16 MS. KING: Ever in their whole lives.
17 MS. RICKER: You might take the
18 language option out of that.
19 MS. KING: I already did.
20 MS. RICKER: So in eighth grade they
21 take what has been chosen as the secondary

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1 assessment?

2 MS. KING: Yes.

3 MS. RICKER: Then when they are in high

4 school, they take what?

5 MR. HAGER: Can I answer that?

6 MS. RICKER: Yes, I'm trying to make it

7 really literal.

8 MR. HAGER: Having grown up in New York

9 state with Regents Exams, I think I can give kind

10 of a practical example of how it would work and

11 what the intent was.

12 So, if I'm in eighth grade and I'm

13 taking a high school course in eighth grade, I

14 don't want be to taking the eighth grade

15 assessment. I want to be taking the assessment

16 that correlates with the course I'm actually

17 taking and have that be credited for my eighth

18 grade assessment.

19 So, if I am in eighth grade taking

20 Algebra 1, which we normally take in ninth grade,

21 I take Algebra 1, and then I get credit for that

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1 if I pass it, in terms of accountability.
2 Then when I'm in high school, I'm
3 probably taking Algebra 2, geometry, trigonometry,
4 calculus, a bunch of these other assessments that
5 go along with the courses I'm taking.
6 I think the goal here would be, to be
7 flexible, one of those other courses that I'm
8 taking in math would qualify me for my one math
9 course in high school. So, I'm taking the course
10 in eighth grade, in an assessment that goes along
11 with that course in eighth grade, and then when
12 I'm in high school, I'm taking an assessment
13 that's aligned with whatever course I'm taking in
14 high school that follows that curriculum.
15 I think that's the intent of the
16 statute, and I think that's what Tony is trying to
17 get at as well.
18 So the goal would be, you take a course
19 in eighth grade. You take the assessment that's
20 aligned with that course in eighth grade, ninth,
21 tenth, eleventh, twelfth grade, some time during

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1 that grade period you're taking other courses, and
2 the course that's going to count for you in your
3 math would be the course that correlates with
4 that -- the exam that correlates with that course.
5 I think that's the goal.
6 MR. EVERS: Right.
7 MS. PODZIBA: Does that clarify?
8 MS. RICKER: No.
9 MS. KING: Can I try?
10 MS. RICKER: Yes, because you kept
11 interchanging course and assessment.
12 MR. HAGER: I know. I'm sorry.
13 MS. KING: Here's my go. So my
14 theory --
15 MS. RICKER: What's a high school
16 student taking?
17 MS. KING: Yes. So the high school --
18 all of the other high school students are taking,
19 whatever, state high school --
20 MS. RICKER: The test they took in
21 eighth grade?

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1 MS. KING: High school -- no -- yes,
2 yes.
3 MS. RICKER: Ok. So what is the former
4 eighth grader who took the high school test
5 taking?
6 MS. KING: A phantom new floating
7 assessment.
8 MS. RICKER: Oh, god.
9 MS. KING: So, yeah. I mean, the
10 reason that I'm ok with it is we're talking about
11 a very limited exception that presumably is part
12 of a state system of having eighth graders take
13 more rigorous math.
14 So, those eighth graders take the
15 regular high school accountability assessment in
16 eighth grade, then in tenth grade they take a
17 "something else" test, which, I understand why
18 it's not statewide. I understand why it's a
19 different thing.
20 I'm comfortable with the exception
21 because it is no narrowly written and it is part

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1 of a standard system around this individual group
2 of children.
3 So, there's two parallel tracks, right,
4 which track like words that makes us very
5 uncomfortable in this context, and I think we
6 should all remember that, but --
7 MS. PODZIBA: I just wanted to get her
8 question answered and then we will have further
9 discussion on the value of it.
10 Are you clear on what --
11 MS. RICKER: Yes. So the answer I
12 heard is that there is a new assessment to be
13 named later?
14 MS. PODZIBA: Well, I think it's --
15 MS. RICKER: -- for that former eighth
16 grader?
17 MS. PODZIBA: I think it's the course
18 that the person is taking.
19 MS. RICKER: To be determined.
20 MS. KING: So the state has determined
21 what those students will take. So whether it

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1 is -- it could be geometry. It could be
2 trigonometry. It could be something that covers
3 multiple -- I mean, am I -- am I
4 MS. PODZIBA: Let me see if there are
5 other people.
6 MS. RICKER: Thank you.
7 MS. PODZIBA: Alvin, did you want to
8 weigh in?
9 MR. WILBANKS: Yes.
10 I certainly concur with Tony's issue of
11 a proposal there, but I would like to add that
12 this does have a limiting factor.
13 ESSA does require the use of the
14 national test, the ACT the SAT. So if you
15 eliminate it here, then that does mean that you
16 are maybe doing away with some flexibility that a
17 lot of systems would have. And at the sake of
18 being redundant, I would simply remind us all
19 that, down where all this gets carried out, there
20 is normally a whole curriculum. It's generally
21 accepted, and if you take Algebra 1, Algebra 2,

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1 it's more advanced, so there is a sequencing of
2 all of that.
3 So, I don't know if we have to specify
4 every single thing in this law. As a matter of
5 fact, I would prefer that we not have -- but just
6 the initial thing.
7 But just the limiting factor, there are
8 going to be some mistakes. I'm not sure that
9 Georgia will do this, but I think there will be a
10 number of states that will use the ACT and the
11 SAT.
12 So if it could be for that, then I
13 don't know that we should necessarily limit that.
14 MS. PODZIBA: Lara?
15 MS. EVANGELISTA: I'm just wondering if
16 we're creating the same possible situation for
17 these students again in high school. Because if a
18 district chooses a nationally-recognized
19 assessment to use, but then they are also required
20 to take a more advanced assessment than the one
21 they took in eighth grade, aren't we then

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1 double-testing them again if we don't have this
2 piece in the regulation?
3 So I would prefer to keep it in.
4 MS. PODZIBA: Ok. So just to help me,
5 for new issues, I have Ron, Thomas and Delia. So
6 if you three could put your cards down for a new
7 issue.
8 For people who still want to get in on
9 this discussion, Lynn, is your card still up on
10 this discussion? No.
11 Ok, Liz.
12 MS. KING: Yeah, I just wanted to
13 remind people that students -- I'm trying to agree
14 with people here. This is so hard. I'm not
15 getting any credit for agreeing with people. I'm
16 getting cut off by Susan.
17 MS. PODZIBA: You're doing great.
18 MS. KING: I wanted to remind folks
19 that these students are exempted from the
20 assessment that other students in their LEA or
21 state are taking in high school. So they're not

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1 double-tested.

2 If they're in their LEA, they're taking

3 the other nationally-recognized assessment in lieu

4 of the statewide assessment those students would

5 otherwise take for high school accountability

6 purposes. They're not taking that. They are

7 taking their sort of geometry test or whatever, in

8 lieu of that.

9 So, I don't think eliminating this

10 provision limits state flexibility.

11 I will let this go. Now I'm just

12 weighing in on what the statute says. But I don't

13 think eliminating this gets rid of any state

14 flexibility or leads to double-testing.

15 I think this is Tony's point earlier

16 which was just that it creates a new confusion

17 having this in here, and that was the point I

18 wanted to make.

19 MS. PODZIBA: So is it your sense that

20 the concern that Alvin and Lara are raising about

21 reducing flexibility doesn't occur when it comes

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1 out of here?

2 MS. KING: Yes.

3 MS. PODZIBA: Ok.

4 Alvin or Lara, do you want to respond

5 to that? Lara?

6 MS. EVANGELISTA: I just think it could

7 be confused. I don't know. When I read

8 state-administered End-of-Course assessment, I

9 think the Regents Exam, right, in New York. As a

10 principal, that's what I would think.

11 I don't think about the fact that the

12 other test, if we choose a nationally-recognized

13 assessment, that we could use that in lieu of it.

14 So maybe we just need to clarify that

15 language. I don't know. But to me, the "or

16 nationally-recognized high school academic

17 assessment" makes it clearer. It's not

18 necessarily the flexibility piece. It just makes

19 it clearer that it could be one or the other.

20 MS. PODZIBA: Tony?

21 MR. EVERS: Geeze, I hate to talk about

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1 this issue, because I'm so against End-of-Course
2 exams.
3 But let me just try this one. The law
4 says a student takes the End-of-Course assessment.
5 The law says that this only applies to states that
6 have End-of-Course assessments. If you look at it
7 that way, yes, it reduces flexibility, but frankly
8 I would love to reduce this issue as far as kids
9 taking End-of-Course exams.
10 You know, we're opening it up to all
11 sorts of difficulty at the state level, and I'd
12 argue at the local level, too. I think this is a
13 real narrow thing. It's ten states, eleven
14 states, they have End-of-Course exams. They can
15 use that End-of-Course exam to allow children
16 to -- and it only applies to them. It allows kids
17 that are in these states. They can use the
18 End-of-Course exam at the high school level in
19 eighth grade, and then when they're in high school
20 at a different age.
21 Frankly, I don't think Congress

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1 intended this to be flexible. I think they
2 intended it to be End-of-Course exams,
3 End-of-Course exams, and that's another reason why
4 I think we should get rid of it.
5 But, there are bigger fish to fry in
6 this one. I can live with just leaving it in.
7 MS. PODZIBA: You can live with leaving
8 it in?
9 MR. EVERS: Yes.
10 MS. PODZIBA: Richard?
11 MR. POHLMAN: I think I have a question
12 if we take that portion out, are we creating a
13 scenario in which the only states for whom this is
14 applicable are those that choose to use the
15 Algebra 1 assessment of high school for purposes
16 of accountability, or those states that choose to
17 use Algebra 1 and geometry as state-administered
18 assessments.
19 And I'm worried about that second
20 provision, because it could encourage states to
21 adopt two mandatory assessments in high school

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1 that maybe is not required, but to the extent that
2 they are state administered...
3 So I'm worried about that potentially
4 happening. I don't know if that could happen, but
5 as I read this, the inclusion of that
6 nationally-recognized assessments could leave an
7 option that was not in the End-of-Course
8 assessment that would allow states to administer
9 the Algebra 1 assessment in eighth grade and then
10 have another assessment for which students could
11 take in high school and still have the Algebra 1
12 assessment be accepted for accountability
13 purposes.
14 Does that all make sense?
15 MR. ROONEY: I think so. I'll try to
16 clarify.
17 MR. POHLMAN: Yeah, I just think that is
18 one reason to leave it in is that it sort of does
19 contravene exactly what Alvin and Tony are saying,
20 which is that it does perhaps expand on the
21 statutory language, but I think it may relieve an

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1 unintended consequence from the statutory language
2 by including it.
3 MR. ROONEY: So I will try and clarify
4 what I think the statute says under B number (1).
5 So it says, "The student instead takes
6 the End-of-Course mathematics assessment the state
7 administers to high school students under
8 A(1)(i)(b) of this section," and that is the
9 requirement that there be one state assessment
10 that is administered to all high school students
11 in the state.
12 So this is clarifying that this
13 permission is for those kids who are taking a
14 course that is aligned to the state's high school
15 End-of-Course Test, and it has to be the same high
16 school End-of-Course Test that is administered to
17 all students in that state. So there isn't an
18 option for states to have multiple End-of-Course
19 tests to meet this requirement. They need to
20 identify, Our high school End-of-Course Test is
21 this.

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1 And then in eighth grade the kids are
2 taking, of course, aligned with that, they can
3 take that test, so long as they then take a higher
4 level math course-end test in high school.
5 MR. POHLMAN: So the first part of my
6 statement is true. This is really only an option
7 for -- well, I guess if a student is taking
8 geometry in eighth grade, which there are not a
9 lot of --
10 MR. ROONEY: Right.
11 MR. POHLMAN: -- those testing to
12 geometry. In eighth grade, there are not a lot of
13 those. But the more common would be Algebra 1 is
14 that state-level high school assessment, and
15 students are able to use that in eighth grade for
16 purposes for accountability. That would be the
17 far more common scenario.
18 MR. ROONEY: That would be the mostly
19 common version. It's possible that states could
20 say, Our high school test is geometry, and some
21 eighth graders take geometry, and they could take

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1 the geometry test in place of the Eighth Grade
2 Test.
3 And then in high school they would have
4 to take something higher than geometry, an
5 End-of-Course test aligned to that course, that
6 they then use for accountability in high school.
7 MR. POHLMAN: Right. But if the state
8 said that, We are going to make the option of
9 state administering both Algebra 1 and geometry,
10 we're only using one for the purposes of
11 accountability, but they're state administered,
12 then would the students in that state be able to
13 take Algebra 1 as the eighth grade assessment and
14 then use geometry, for instance, however as the --
15 MR. ROONEY: So the state always has
16 the discretion to have multiple End-of-Course
17 tests that they require their kids to take.
18 MR. POHLMAN: Mm-hmm.
19 MR. ROONEY: We don't require that in
20 federal law. The ESSA does not require that.
21 MR. POHLMAN: Sure.

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1 MR. ROONEY: The state has to identify
2 what is the test that they are administering to
3 all students in the state that meets the
4 requirements to have one test in high school.
5 That is the one test that we're referring to.
6 MR. POHLMAN: They will basically be
7 weighing the priority of, Do we offer Algebra 1
8 End-of-Course option for eighth graders or do we
9 shift assessments for those states that have said,
10 This is geometry."
11 MS. PODZIBA: I just want to shift the
12 discussion, because if I understand correctly,
13 Tony, did you withdraw your proposal?
14 MR. EVERS: I'm ambivalent to it, but I
15 guess so.
16 MS. PODZIBA: Ok. Is there anyone who
17 can't live with leaving the language in as it is?
18 Audrey.
19 MS. JACKSON: This isn't that I can't
20 live with it, but I just have a clarifying
21 question.

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1 If we're talking about students who are
2 taking advanced math courses, I'm not sure why you
3 would -- what the benefit would be of using the
4 nationally-recognized assessment at an
5 eighth-grade level, for an eighth grader would be
6 and imagine that they would ultimately desire to
7 take it again later on, if it's an ACT, SAT type
8 of thing for college entrance exams.
9 I may be misinterpreting and mixing up
10 the assessments, but I don't see -- I don't
11 understand. I'm confused by that.
12 MR. ROONEY: Let me try to clear your
13 point up, Audrey. I think I hopefully will
14 clarify it.
15 In the example Rich and I were just
16 using, if the state's high school test was Algebra
17 1 for high school, a student taking Algebra 1 in
18 eighth grade would take the Algebra 1 test. That
19 is the only option they would have. It would have
20 to be only for those students taking Algebra 1.
21 They could take the Algebra 1 test.

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1 Then when they get to high school, they
2 have to take another test, and the way this
3 section is written, it would provide discretion to
4 states to determine whether it's another
5 state-administered End-of-Course Test -- geometry,
6 Algebra 2, one of the other Regents test in New
7 York, to Lara's example -- or a
8 nationally-recognized test like potentially the
9 SAT or ACT.
10 So they would take that at some point
11 in high school. They wouldn't take that in grade
12 eight.
13 In grade eight they're taking Algebra 1
14 test, because that's the state's test and it's in
15 theory providing some flexibility for states in
16 terms of what options they provide to those kids
17 in high school.
18 MS. RIGLING: Can I also clarify that?
19 As I think we talked before, this
20 option is only available to states that have
21 End-of-Course high school assessments. It's not

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1 an option for a state that would have an on-demand
2 test, for example, in tenth grade or eleventh
3 grade, or that perhaps chose to use the ACT or the
4 SAT for their high school assessment.
5 Those students would not be taking the
6 ACT or the SAT or their state high school
7 on-demand test in eighth grade.
8 It's merely to get those students that
9 are taking a course in eighth grade that is a
10 high-school-level course that the state considers
11 to meet its requirement to have a
12 high-school-level course and assessment in high
13 school. Because the students are taking that
14 early.
15 So I think the statistic was maybe ten
16 or eleven states right now have End-of-Course high
17 school assessment that they use for federal
18 accountability purposes. That's also an important
19 distinction here.
20 MS. PODZIBA: Lynn?
21 MS. GOSS: Is part of the confusion the

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1 "state-administered" words in there, and can you
2 remind me why that was added in?
3 MR. ROONEY: So our purpose with adding
4 "state-administered" is to focus on that this has
5 to be a state test. It can't be a locally
6 developed End-of-Course Test. A lot of districts
7 have End-of-Course tests that they use for other
8 purposes in the district, but because this is the
9 state's assessment system, for this permission in
10 states that it should be a different state
11 assessment that could be an End-of-Course Test.
12 And I think Liz' point earlier, it
13 would not necessarily have to be a statewide test
14 that the state requires all kids to take, but it
15 would have to be a state's End-of-Course
16 assessment.
17 MS. GOSS: So, it basically is
18 statewide kids -- statewide test for that subset
19 of kids that are taking the Eighth Grade?
20 MR. ROONEY: Yeah, but I wouldn't
21 characterize it as statewide, because that makes

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1 it sound then like all kids are taking it.

2 But it could be the case that Algebra 1

3 is the test that all kids have to take. Eighth

4 graders who are in Algebra 1 can take the Algebra

5 1 test, and the state could make available a

6 geometry test and those kids would have to take

7 the geometry test in high school. But not all

8 kids would necessarily have to take it. That

9 would be at the state's discretion.

10 MS. PODZIBA: Ron?

11 MR. HAGER: So I think, Kay, you

12 finally clarified it for me.

13 So, if a state has chosen the ACT or

14 the SAT as its high school assessment, then this

15 whole provision would not even apply to those

16 students.

17 That kind of deals with Lynn's question

18 about the double-testing. This only applies if

19 they have a specific -- as their high school

20 assessment a specific End-of-Course Test.

21 So I think that makes it clearer for

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1 me. So I'm good now.
2 MS. PODZIBA: Ok. So it sounds like it
3 stays, and I don't want people to feel bad about
4 this. This is what this looks likes. This is
5 what we're going to be doing for the next three
6 days. We're going to go over it, because this
7 kind of discussion helps clarify what it actually
8 says.
9 So, I'm ready for a new issue and I
10 think Ron you're next on the new issue.
11 MR. HAGER: It's kind of like the
12 lawyer in me question I guess, and parallel
13 construction, was there a reason why you put in
14 under the high school test under 3 subette (i)(b),
15 the appropriate accommodations but didn't include
16 it up above in B(1) for whatever they're taking,
17 Eighth Grade?
18 Was there something that you had the
19 reference to the accommodations in one spot and
20 not the other? Was it intentional? It just kind
21 of popped out to me.

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1 MR. ROONEY: So I think our answer to
2 that would be that, because the high school
3 assessment state has to demonstrate that that
4 assessment is valid, reliable and fair and that
5 they provide reasonable accommodations for all
6 students, that that is covered elsewhere in the
7 regulations.
8 But under 3, this is just about that
9 other high school test and clarifying that that
10 test needs to be state administered or a
11 nationally-recognized test, they need to make sure
12 they're providing appropriate accommodations.
13 And then the reference to 200.6, which
14 is where we get into all the accommodations for
15 English learners and students with disabilities.
16 MR. HAGER: Got it. Got it. Because
17 the other one automatically has those criteria
18 built in. This is what Liz' point was, this high
19 school test, whatever it might be, we want to make
20 sure the accommodations are provided. Because
21 that's not automatic at this point. Ok. Got it.

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1 Then I had a follow up, which is the
2 use of the phrase "appropriate accommodations,"
3 which, I just want to put a placeholder in there,
4 when we get to 200.6 and the accommodations
5 questions, so, I just want to say that when we
6 talk about that issue, how it does cross-reference
7 here we need to talk about here.
8 MS. PODZIBA: Ok. Thanks.
9 Thomas, your next new issue?
10 MR. AHART: On Page 3 Item 4, "Where a
11 state demonstrates that it offers all students in
12 the state the opportunity to be prepared for and
13 to take advanced mathematics course work in middle
14 school," I was wondering where that came from and
15 how state might demonstrate that?
16 MS. PODZIBA: Could you hold off on
17 that, because we were just looking up to the end
18 of Page 2, and then --
19 MR. AHART: Ok.
20 MS. PODZIBA: And then Patrick will
21 introduce that rationale. Thanks.

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1 Delia?

2 MS. POMPA: I had the same question.

3 MS. PODZIBA: Ok. It looks like we are

4 up to that, Patrick.

5 MR. ROONEY: I assume that there would

6 be some discussion of this topic or this

7 paragraph.

8 So this is paragraph now Paragraph 4 on

9 Page 3, "Where a state must demonstrate that it

10 offers all students in the state the opportunity

11 to be prepared for and to take advanced math

12 course work in middle school".

13 We did talk about this in the last

14 session and this language hasn't changed. This is

15 something the Department has asked states to do

16 previously, or currently through the ESEA

17 Flexibility Plan. We talked a little bit about

18 what kinds of things states demonstrated, but

19 through the ESEA Flexibility waivers that we

20 provided, one of the things states could ask for

21 was this exception for middle school students

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1 taking advanced math, and we asked states to
2 demonstrate how they're making opportunities
3 available to all students.
4 This could include data showing how
5 students have had access to advanced math in
6 middle school, but it also could include state
7 policies of how states and districts are providing
8 opportunities for students, such as through
9 distance-learning options, dual-enrollment
10 programs with community colleges, and, you know,
11 other state-determined options.
12 I think our intent in the regulation
13 was to set the expectation, but not to be
14 prescriptive on how states demonstrate how they
15 have met this requirement.
16 It may be a good thing to talk about
17 Guidance that may help support how states would
18 come in for this, but in the regulation it's
19 laying out the expectations.
20 MS. PODZIBA: Yes?
21 MS. POMPA: So if 4, and I understand

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1 where you're going, if 4 fits under the middle
2 school exception and the middle school exception
3 is only for places where there is an End-of-Course
4 exam, is this encouragement that's provided for
5 elsewhere, where the kids aren't taking
6 End-of-Course exams?
7 It seems very specific, if I understood
8 what Tony and others were saying, that this is
9 only for states with End-of-Course exams.
10 MR. ROONEY: That's correct. This
11 whole section only applies to states with
12 End-of-Course tests that want to provide
13 flexibility for their eighth graders to take the
14 high school tests in eighth grade and then take a
15 different math test in high school.
16 MS. POMPA: So for districts or states
17 that allow eighth graders to take a higher level
18 course, or encourage it, but they don't have an
19 End-of-Course exam, would number 4 apply?
20 MR. ROONEY: No. Remember, this
21 regulation is about state assessment systems and

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1 the requirements for states related to their
2 assessments. It's not about the course-taking
3 patterns or the curriculum that's done at the
4 state and local level, which is not something
5 we're contemplating or permitted to contemplate.
6 MS. POMPA: It just seems like you're
7 encouraging the state to make these options of
8 higher-level courses available, but it's only in
9 the case of an End-of-Course exam, in doing this,
10 weren't you trying to encourage states to offer
11 higher-level math to kids, not just in places
12 where they have an End-of-Course exam?
13 MR. ROONEY: So I don't disagree with
14 that concept. I think our challenges are what is
15 our ability to do that, and I think what we are
16 focusing on is, if states are taking advantage of
17 this permission in the statute, that they are not
18 making it available to some and not others within
19 the state; that it be an option that's equally
20 afforded to all students in the state to have that
21 ability to take higher-level math equally, and

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1 that the state demonstrate how they're doing that.
2 MS. POMPA: Thank you.
3 MS. PODZIBA: Thomas?
4 MR. AHART: Yes, this begins to feel to
5 me like advanced won't be advancing more. It will
6 be the norm, and so how will that shift?
7 I guess I'm not seeing -- I appreciate
8 the waiver discussion being in a state that wasn't
9 granted any waivers. I'm just wondering where
10 this language comes from in ESSA, what that's
11 grounded in?
12 MR. ROONEY: So to be clear, this is in
13 red because it's not something that's grounded in
14 the ESSA. This is something we proposed as a
15 safeguard in the system to help make sure that
16 this is not an option that states offered but that
17 not all kids have the ability to take advantage
18 of.
19 We know not all kids will take advanced
20 math course in middle school, but if they're not
21 afforded the option because it's not -- advanced

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1 math courses aren't offered in some areas of the
2 state, or, you know, because if they're rural or
3 wherever the limitation may be, the state may be
4 thinking about how they can make those
5 opportunities available for kids to take those
6 courses and be able to take those tests, if they
7 are a state with an End-of-Course test.
8 MS. PODZIBA: I'm going to get a couple
9 of comments in. Kerri?
10 MS. BRIGGS: I think you talked about
11 this last time, but I forgot.
12 What did you learn in the waiver
13 process and what kind of information were states
14 providing around this? Was it meaningful? I can
15 see that this might just be a paperwork exercise.
16 MS. PODZIBA: I'm going to get in a
17 couple comments, because I have a hunch these
18 aren't proposals. These are more clarifying
19 questions, so let's get a bunch of them.
20 Mary Cathryn?
21 MS. RICKER: My question would be what

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1 does a state demonstrating the AMP to take
2 advanced mathematics course work in middle school
3 look like for single-school LEAs, and in rural
4 areas especially is what I'm trying to think
5 through?
6 MS. PODZIBA: Tony?
7 MR. EVERS: Just operationally at the
8 state level, even though we don't do End-of-Course
9 exams in Wisconsin, thank God, the issue here for
10 us for similarly situated states is how you
11 operationalize this.
12 In Wisconsin we have no -- school
13 districts adopt their own standards if they want
14 to. If they don't, they have that opportunity.
15 They determine the curriculum.
16 So this is something that's very hard
17 for a state-level organization to monitor and
18 encourage, to be honest with you. So I find this
19 problematic. I think it's a little beyond
20 Congressional intent, but maybe if we could
21 compromise on something about a state will post

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1 information on what the states are doing and what
2 are best practices, it kind of gets away from the
3 "demonstrates" piece.
4 MS. PODZIBA: Audrey?
5 MS. JACKSON: Tom really got me going
6 with his "advanced won't be advanced any more"
7 concern, and I'm going to tie in a few things.
8 So, one, I think groups -- or subgroups
9 who have had privilege for a long time, when
10 you've had privilege for a long time, when equity
11 issues come up, it starts to feel like an effort
12 to oppress when actually it is just to make
13 equitable.
14 And so to that extent, I'll just cite
15 connections to what Kerri said and then both also
16 the idea of what this would look like beyond the
17 scope of regulations.
18 So perhaps in Guidance, I've been
19 sitting here thinking like, This is ridiculous.
20 How would you actually ever prove this? Because
21 the systemic layers that contribute to who has

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1 access are so deep and pervasive and beyond one
2 policy's ability to necessarily impact.
3 But the more I'm listening, the more I
4 think that it's really important to have and to
5 back up what Kerri said about lessons learned from
6 waivers granted about practices actually
7 influencing positive change on the ground, instead
8 of a blanket statement that would be, Ok, this
9 sounds nice and we're just burdened with
10 paperwork.
11 But an example from Massachusetts, just
12 to cite and clarify and bring back the kids for
13 all of you, is that we have an advanced work
14 program in Massachusetts that started after the
15 whole bussing issues in the 70s.
16 I may have referenced this before, but
17 students get into advanced work classrooms that
18 begin in fourth grade based on a time-standardized
19 test that is administered in the first month of
20 third grade.
21 So that's something that highly impacts

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1 and is correlated to who ends up in advanced math
2 courses later on, but it goes back so many layers
3 that no one would want to be so prescriptive with
4 federal policy that you're saying, you know, You
5 can't do something like that.
6 But I would hope that this and perhaps
7 Guidance language around what to consider, and as
8 Kerri said, which lessons learned from waivers
9 prompts examples of effective implementation and
10 analysis of these trends may help states to start
11 to consider what policies help to reduce those
12 barriers without being overly prescriptive.
13 But I just want to note that I think,
14 even though my initial reaction is how is number 4
15 possible, doesn't mean that I don't think that
16 it's important.
17 MS. PODZIBA: Richard?
18 MR. POHLMAN: I'd like to speak about
19 the comments around local control issues that Tony
20 and, to some extent, Mary Cathryn brought up that
21 applies very briefly to charter districts.

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1 Number 4 seems to me, you know, in its
2 language, expecting a state to demonstrate that
3 "it" offers X, Y or Z when many of our states have
4 no actual authority or control over what's offered
5 in schools because of state-level rules around how
6 they can actually impact curriculum or instruction
7 I think could have a chilling effect for
8 innovation, specifically in charter-rich
9 districts.
10 So we are very concerned about any
11 unintended consequences for this language,
12 although I understand it's somewhat limited to the
13 states too, as we discussed at first, but I still
14 think that having that language is of concern.
15 MS. PODZIBA: Derrick.
16 MR. CHAU: I definitely want to act on
17 what Richard just said.
18 Being in a district with over a hundred
19 charter schools, I think it would be very
20 difficult to enforce any sort of a policy to ask
21 that every single LEA in the state demonstrate

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1 this piece.

2 I definitely want to echo what Tony

3 Evers mentioned, that this seems like, although

4 this was part of the waiver process, it sounds

5 like is necessarily wasn't part of the statute.

6 I applaud the intent behind this in

7 terms of ensuring that there's equitable access.

8 I'm just wondering how there might be another way

9 through Guidance or other ways to maybe --

10 I'm concerned that this is asking --

11 there's an assumption behind this statement that

12 it's not happening, and I don't know if that's

13 always the case, and I would hate to go into

14 writing regulations that have that kind of

15 assumption, even though I'm pretty sure that the

16 data would probably show that there is some

17 inequity there.

18 But maybe the fact that asking states

19 to provide data might be helpful, but that might

20 be part of the Guidance that we provide as part of

21 this work, to be transparent with who is taking

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1 these assessments could be something that we could
2 put into the Guidance rather than put into the
3 regulation.
4 MS. PODZIBA: Aaron?
5 MR. PAYMENT: Ok. So I have a parallel
6 to another committee that I'm working on and it's
7 the Research Advisory Council. One of our
8 drivers, one of her desires is her tribe to adopt
9 IRBs. So obviously we can't tell them to do it.
10 We can't restrict them to do it. We can't tell
11 them to do it. But we want to incentivize them to
12 do it.
13 So what we have proposed is that we
14 publish annually those IRBs, the tribes that have
15 IRBs, and we actually publish a link to the IRB
16 protocols that they have on their individual
17 tribes.
18 So if the motivation for proving it was
19 to be an incentive, I think you can get there with
20 just a modest change to the language. So I'd like
21 for them to have an expectation but not a

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1 regulation. And so maybe the language could read,
2 "The state shall publish efforts to ensure all
3 students in the state" -- I missed a word. "All
4 the students in the state to be prepared" -- "the
5 opportunity to be prepared for all to take the
6 advanced course work in middle school".
7 So it has the effect of the incentive
8 when promoting it without actually having the
9 regulation. And it also has the benefit of peers
10 seeing what's being published for those tribes --
11 not those tribes, those communities that are more
12 progressive than others, those states that might
13 be more progressive, and then they might
14 voluntarily jump onto best practices.
15 MS. PODZIBA: Aaron, could you read
16 that language out again.
17 MR. PAYMENT: Yeah, I'll try.
18 "The state shall publish," instead of
19 "demonstrates," "the state shall publish efforts
20 to ensure all students in the state the
21 opportunity to be prepared for all to take the

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1 advanced course work in middle school".

2 So it really only changes

3 "demonstrates" to "publish," but it does say

4 "shall publish".

5 It doesn't say how frequently, and I

6 don't know if we need to modify that, but I think

7 it gets to the intent of the stipulation.

8 MS. PODZIBA: So are you leaving in

9 "that it offers"? So "The state shall publish

10 efforts to ensure that it offers all students"...

11 So is the revision just taking out

12 "demonstrates"?

13 MR. PAYMENT: No, I think -- no.

14 Because I think that the "that it offers" -- by

15 using the word efforts, you can eliminate that it

16 offers, because that still sounds more

17 prescriptive.

18 MS. PODZIBA: Ok. So your proposal is

19 to leave "demonstrate that it offers"?

20 MR. CHAU: No. "The state shall

21 publish efforts."

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1 MS. PODZIBA: Right, but you're
2 removing "demonstrate that it offers" and
3 replacing it --
4 MR. PAYMENT: Yes.
5 NS. PODZIBA: -- with "shall publish
6 efforts to ensure."
7 MR. PAYMENT: Yes.
8 MS. PODZIBA: I just want to be sure
9 that I have the proposal correctly.
10 I have a few more comments and then we
11 will take up that specific proposal.
12 Ron.
13 MR. HAGER: Thank you. I just want to
14 reemphasize what people have said about this.
15 This is a critical issue, because
16 especially students with disabilities, English
17 learners, people from low-income backgrounds do
18 not in many districts have these opportunities or
19 take the opportunity to avail themselves.
20 So I just want to reemphasize how this
21 is a critical issue. How we word the language is

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1 another question, but it is an important issue.
2 MS. PODZIBA: Thomas.
3 MR. AHART: I agree that it's a
4 critical issue and we're inherently motivated,
5 regardless of what federal policy either is, for
6 all of our students, and now I know there is not
7 best practices happening in every single
8 individual place, but I would suggest that we
9 strike this language and put whatever we want to
10 address this particular issue in Guidance.
11 But we can go down this rabbit hole a
12 long ways, and this has all sorts of other
13 implications. You know, is this going to be
14 reporting on something that really doesn't
15 substantiate that the intent is really being
16 accomplished is one of my concerns.
17 There are different contexts in
18 different districts, and what it may look like to
19 demonstrate to whatever standard this means, in my
20 district it would look very different than in a
21 small rural district, for instance.

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1 So it feels as though we would be going
2 through another exhaustive reporting requirement
3 that doesn't actually accomplish the intent behind
4 the words.
5 As laudable as it is, it stretches
6 beyond what the language says, and if it's, you
7 know -- if this is really about an equity piece,
8 then let's include that in perhaps equity Guidance
9 and not particular to advanced eighth grade math,
10 which to me suggests that that's the only area
11 that people care about, and that's not true for
12 us.
13 I just feel like it's getting very
14 narrow, and if we take this same approach on all
15 the other issues in here, we're going to end up
16 with a mountain of regulations that doesn't really
17 help us benefit our students.
18 MS. PODZIBA: So, I hear you responding
19 to Aaron's proposal and offering a
20 counterproposal. What I'd like to do is get
21 Lisa's comment and then hear a couple more

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1 comments on Aaron's proposal before we take your
2 proposal, which as I understand it is to delete
3 that paragraph.
4 Lisa.
5 MS. MACK: I'm not necessarily weighing
6 in one way or the other. I guess I'm a little
7 bit -- I want a point of clarification. Isn't
8 this the same exact language that we had here from
9 miss war? I'm kind of confused why we're having
10 this discussion now when it wasn't a discussion
11 previously.
12 MS. PODZIBA: In the first session?
13 MS. MACK: Yes.
14 MS. PODZIBA: People didn't look -- I
15 think we didn't look that closely at the
16 regulatory language.
17 So Aaron made a proposal to revise that
18 paragraph, "The state shall publish efforts to
19 ensure all students," et cetera. Could I have
20 some more discussion on that.
21 Patrick?

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1 MR. ROONEY: I'd just ask for a
2 clarification, Aaron, on the intent of this edit
3 of yours.
4 I could read this to say, "The state
5 shall publish data about the number of kids taking
6 different math courses in middle school".
7 I could also read this to say, "The
8 state shall publish its policies for how it
9 ensures kids have the opportunity to take advanced
10 math course work".
11 I think those are very different
12 things. I don't know if you mean one or the other
13 or if you mean both.
14 MR. PAYMENT: Both.
15 MR. ROONEY: You mean both?
16 MS. PODZIBA: Yes.
17 MR. PAYMENT: So my desire is that, I
18 believe that the language and the intent is
19 laudable, and if you believe that, while it
20 doesn't directly connect to compelling equity,
21 it's almost like a voluntary effort that states

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1 can then report on what they're doing both in
2 terms of -- well, completely what they're doing,
3 and so I think it can help facilitate.
4 So I guess now I'm wondering whether
5 it's regulatory or Guidance, and I guess I'm
6 flexible on that, but I think taking it out
7 entirely misses the point that we're actually
8 promoting. And that's what I'm interested in is
9 promoting it.
10 Whether or not we can stipulate it,
11 and, you know, we've got to have a balancing act
12 between what we desire, what we want to happen and
13 what states have the sovereign right to agree to
14 do or not to do. Because we can try to stipulate
15 it and they will find a way not to do it, because
16 they are sovereigns.
17 So I'm trying to get to respecting the
18 desire to promote it, and publishing efforts is
19 one way to get there.
20 Again so what I'm willing to concede to
21 is whether it's in the regulatory or if it's in

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1 Guidance.

2 MS. PODZIBA: Thank you. Mary Cathryn.

3 MS. RICKER: I really appreciate this

4 language that the state shall public to again have

5 peers look at each other's work to see what they

6 can adopt from one district to the other.

7 My concern with this language is

8 similar to my concern with the original language,

9 however, and that is that both assume that all

10 districts have the resources to offer those

11 advanced math classes.

12 To use an example, to bring it right

13 back to the real experience of kids, as well, you

14 know, I'll just use one district in northern

15 Minnesota that, because of the political decisions

16 of a group of people in St. Paul to starve

17 districts of resources, were in the very

18 unenviable position of having to cut entire

19 programs from their high schools, and one of the

20 programs they cut was their science program.

21 They could have split the difference I

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1 suppose and cut half their math program and half
2 their science program, but it was still very real.
3 It took them three tries and an excess
4 levy referendum to get the money back generated in
5 their community to get some semblance of that
6 program back.
7 So to assume that that district just
8 chose not to offer, because they thought, that,
9 Oh, our kids don't need those courses or whatever,
10 is to assume that they were misusing resources
11 that someone else decided that they weren't going
12 to be allowed to have.
13 And so, again, the question I had the
14 first three days we met about this language is the
15 question I had last hour about this language, and
16 that is what does it look like for a state to
17 demonstrate it is providing the resources for all
18 districts, whether they be single-school LEAs, or
19 large comprehensive LEAs, to take advanced math
20 course work in middle school.
21 MS. PODZIBA: So, it sounds like

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1 conceptually people want the intent of this to
2 happen, but there's a lack of clarity in how to
3 cause that to happen.
4 Patrick?
5 MR. ROONEY: So, I think hearing that
6 discussion, which I appreciate there's definitely
7 different sides on this, what it if we tried an
8 alternative approach to keeping this this, but to
9 saying, "the state should describe its strategies
10 to ensure that all students in the state have the
11 opportunity, and then it becomes less about
12 particular data, but it would be about how it's
13 providing opportunities or how it's supporting its
14 districts to provide opportunities.
15 MS. PODZIBA: Aaron?
16 MR. PAYMENT: So let's find a way to
17 get there, because I think it is a laudable
18 effort, and the language that I used, I'm flexible
19 with it. The language would demonstrate -- so
20 part of me, as a high school dropout who slipped
21 through the cracks, would love to compel states to

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1 do it, but we recognize that the states are
2 sovereigns, and if you put a regulation in place
3 that they're not going to follow, they're not
4 going to follow it. They're going to find a way
5 around it.
6 So the language that was previously
7 stated sounded a little more affirmative of what
8 they were required to do, to demonstrate that it
9 offers. So that says that it's not only making it
10 known, but also that there's things that they're
11 specifically required to do, and they're going to
12 push back on that.
13 So if our intent is to promote, then
14 what is the right language that we can come up
15 with for promoting?
16 I mean, I substituted language,
17 "published," and I just did it real quick, because
18 that promotes it without compelling it. To me
19 it's not required. It's promoting. So if there's
20 a different language --
21 So, before we throw the baby out with

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1 the bath, because I know we're still reacting to
2 the original language, and if we're in
3 agreement -- so we probably should just decide if
4 we're in agreement on the original language or not
5 and then dispense that, then find if there's
6 alternate language. Because we're still reacting
7 to the original language, and my proposal
8 shouldn't carry any of the baggage of that
9 original language.
10 Because I'm not saying that the states
11 have to demonstrate that they offer. I'm not
12 saying that at all. The language I tried to
13 substitute is that states shall publish efforts to
14 ensure all students. And that's a promotional
15 thing. It's more of a positively oriented thing,
16 and it might even compel states to compete about
17 what they're doing.
18 MS. PODZIBA: So, just from a process
19 point of view, this is a little less formal than
20 kind of a Roberts Rules of Order. So instead of
21 voting on every proposal, it's more that there's a

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1 sense of people are not comfortable with it and
2 another proposal is put toward, then we just kind
3 of move to that.
4 So I'm wondering how people -- Patrick
5 kind of countered with another proposal based on
6 your proposal, based on the discussion of it.
7 So I'm wondering -- Patrick, I'm not
8 completely sure. You used the word "should."
9 "The state should describe its strategies to..."
10 and what was the rest of that?
11 MR. ROONEY: Sorry, the word should be
12 a "must" actually I think in regulatory language.
13 "Should" is not proper.
14 MS. PODZIBA: So "should a describe its
15 policies to ensure it offers all students"; is
16 that what you're --
17 MR. ROONEY: Yes, I think the language
18 on the screen is what I was proposing.
19 MS. PODZIBA: Ok. So can we have a
20 discussion on that proposal?
21 Rita?

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1 MS. AHRENS: Sure. My reaction is I
2 actually prefer Aaron's proposal, which is
3 publishing efforts, and that would include data.
4 While it's helpful to know what the
5 strategies have in the state's plan, I think it's
6 important to know whether those strategies
7 actually come to any sort of fruition so that we
8 can see whether there are particular groups of
9 students that we know have been historically not
10 able to access advanced math, and by those groups
11 of students I mean students with disabilities and
12 especially English language learners.
13 We know that there are disparities in
14 terms of providing them access, and so I think
15 that data is very important to see whether the
16 state strategies are actually working.
17 MS. PODZIBA: Kerri?
18 MS. BRIGGS: So just operationally, a
19 state would be thinking -- like my home state of
20 Texas uses Algebra 1 as its End-of-Course Exam for
21 high school. They would be setting up a system

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1 ahead of time for districts to say, We've got
2 these two classes of kids who take Algebra 1 in
3 eighth grade, in Houston -- I'm making that up --
4 and as part of their statewide assessment system,
5 somewhere in that information they're also
6 describing the strategies they're using to think
7 about how to make sure all kids are prepped for
8 advanced math in general, with not necessarily
9 about the exception of two classes of kids taking
10 Algebra 1 in eighth grade.
11 Is that sort of how this would work?
12 MR. ROONEY: I think so. This would be
13 something probably Guidance would have to clarify
14 a little bit more to provide some support for
15 states in terms of what this would be. But that
16 sounds like a reasonable idea.
17 MS. BRIGGS: I don't have like a huge
18 issue with this thing except for I just feel I do
19 worry about putting in a regulation that I don't
20 think is going to change the dynamic on the
21 ground.

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1 I mean, we haven't really talked about
2 the data show from the waiver process in terms of
3 what states were offering and kind of whether any
4 data around what that looked like on the ground.
5 MS. PODZIBA: Ok. I'm going to take
6 three more comments and then go for a break and
7 then we'll pick up. Ok, Ron, you slipped in under
8 there, but I've got a whole bunch of people who
9 are in line.
10 MR. HAGER: I'll wait.
11 MS. PODZIBA: Thomas?
12 MR. AHART: Do we have a picture of
13 what has been shared with those waiver states. I
14 share the same concern. I think that everybody
15 believes this is a laudable goal. It feels like
16 it's an overextension of what's actually in the
17 code, and then I wonder what that says about what
18 we anticipate being included on other topics, as
19 well.
20 So if it's an equity issue, let's call
21 it an equity issue, and to me, if it's an equity

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1 issue, it goes way beyond demonstrating that you
2 have a pathway for all students to take advanced
3 math course work.
4 So it feels like this will be
5 additional work that won't really materialize into
6 something necessarily beneficial or changes and
7 practices at the district level that are going to
8 impact kids.
9 MS. PODZIBA: Tony?
10 MR. EVERS: I think the alternative
11 proposal is a bit more driving, driving us to the
12 point where in regulations we're making things
13 that are not anywhere near their Congressional
14 attempt, such as ensuring that all -- I'm not sure
15 if we're a state that is in this category, but to
16 ensure that all states have the opportunity. I
17 don't think states can ensure that.
18 So that's a problem. I think it would
19 be better for us to deal with this whole thing n
20 Guidance, but that's my preference. But I think
21 this alternative proposal is not something I can

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1 support.

2 MS. PODZIBA: Ok. Let's take a

3 fifteen-minute break and we'll come back and see

4 where we are. So let's reconvene at 11:05.

5 (Recess taken.)

6 MS. PODZIBA: As soon as everyone's

7 back in their seats, we'll get started.

8 Alright, so I'm going to sum up where

9 we are on this issue and then make a process

10 proposal.

11 So, on Page 2 the only item that was

12 flagged was, "is more advanced than the

13 assessment". And there was a suggestion to move

14 that into Guidance, and Richard, who flagged it,

15 is ok with that being further described in

16 Guidance but not on the regulation.

17 So, the only thing that's outstanding

18 then on this issue paper is Paragraph 4, and the

19 way I understand that issue is that there is a

20 sense that its intent is agreed to by everyone,

21 and there's concern that there not be requirements

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1 that create work that don't get at the intent of
2 it. And if that's a fair articulation of what's
3 been said, I'm going to propose that we move on to
4 the next issue paper and then we'll come back to
5 this in the hopes that offline or -- that
6 creativity emerges as people think about how to
7 accomplish what all of you actually conceptually
8 agree should happen. Is that ok?
9 Janel, did you have a comment before we
10 leave this issue?
11 MS. GEORGE: Yeah, so I just had a
12 quick comment about this, and I don't want to
13 belabor the point, because I do agree that it's
14 clear we all agree on the intent of this
15 provision. It's a very narrow exception, and I
16 think that those who choose to exercise this
17 exception can show that they are really acting in
18 compliance with the spirit of Title I, which is
19 about equity.
20 As I said, I do agree that there is
21 consensus with what the intent of this language is

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1 and again don't want to belabor the point on that.
2 MS. PODZIBA: Thank you.
3 So again, when we come back to this
4 issue, it will be around Paragraph 4. If people
5 get some really good ideas or thoughts about how
6 to accomplish what people are looking for, we will
7 hopefully start with those ideas.
8 So Patrick, in looking at the agenda, I
9 think that we are ready to move to Issue 5A.
10 MR. ROONEY: Alright, Issue 5A. That
11 was a very good discussion. I think we set that
12 up thinking it would be one of the quicker
13 discussions. Perhaps I can do a little bit better
14 job describing, hopefully we can jump into the
15 discussion a little more quickly, but I appreciate
16 everyone's comments and I hope we keep good
17 discussions going. Clearly we're generating a lot
18 of discussion, which is the purpose.
19 So Section 5A Issue Paper 5A is on
20 including English learners in the state assessment
21 systems. And you remember that there is 5A and

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1 5(b). 5B is specifically around English language
2 proficiency tests. So this is just about
3 including English learners in the academic
4 assessments in reading language arts, math and
5 science.
6 I remember from our last discussion
7 there was a lot of discussion around this topic
8 and the questions that we posed, so I suspect that
9 there will be lots of discussion again. I
10 definitely want to encourage that.
11 So from the first discussion we heard a
12 lot about there's strong interest in making sure
13 the assessments provide valid and reliable results
14 for English learners, and, I think it was Tony
15 that mentioned that this is an area that states
16 particularly want to pay attention to that there
17 is a strong need in the field for these tests for
18 English learners.
19 We also heard from several of you that
20 this is a very diverse group of students with very
21 different language needs that vary tremendously

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1 across English learners; that's it's not a
2 homogenous population.
3 Kenji Hakuta when he was here talked
4 about native language translations of tests, which
5 can be helpful depending upon the student's
6 language of instruction and how much prior
7 instruction they've had in their native language.
8 And he also mentioned that there's been a lot of
9 recent growth in efforts to support bi-literacy
10 for English learners and how that may interact or
11 interrelate to the need for native language
12 assessments.
13 So based on all that discussion, we
14 proposed the language that you see beginning on
15 Page 2 of this issue paper. I'm going to walk
16 through a little bit, try to walk through all of
17 it, because I think that makes sense, and then we
18 can stop for discussion.
19 So the language makes clear that
20 English learners need to be provided appropriate
21 accommodations, and I think a point Ron might have

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1 made the last time, if you look under (f)(1),
2 capital A, near the beginning we changed
3 "reasonable" to "appropriate," so it's
4 "appropriate accommodations," because that's the
5 language that's actually in ESSA.
6 And then we further described that
7 "States must ensure that English learners taking
8 tests with accommodations get all the same
9 benefits as other students taking the tests
10 without accommodations." And this bullet
11 reiterates sections that are in Title VI of the
12 Civil Rights Act. "A state must ensure that a
13 student who takes an accommodated form of the test
14 can still use the results for all the same
15 purposes as the student who takes the test without
16 accommodations; that there is no separate result
17 for those kids just because they're taking the
18 test with accommodations. And that is capital A,
19 under romanette ii.
20 And then, next the, "State has to
21 provide a state-determined definition of languages

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1 present to a significant extent," and we spent a
2 fair bit of time in the first session talking
3 about what that language meant.
4 In this proposal for your
5 consideration, we left that specific definition up
6 to each state, but we established some criteria
7 here in our proposed regulations of what states
8 had to include, criteria they had to include, and
9 required that the state identify the native
10 languages it has, the native language tests it
11 has, and those for which it thinks it needs a
12 native language translation but has none
13 available, and then ask for the plan for how the
14 state is going to make those native language tests
15 available.
16 And the state has discretion to
17 describe what it's done to make every effort to
18 have those tests available for any of the native
19 languages -- identified that it needs, including
20 describing why the state cannot develop such
21 assessments, and you can see that on the top of

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1 Page 3. It's a little hard to follow. It's
2 actually the capital E is where we describe that,
3 under number 3, under E on the top of Page 3.
4 And then in section four -- no, that's
5 section three, I'm sorry, we set out the minimum
6 criteria the state must follow in defining what it
7 means to be "significant extent".
8 And, you know, as we described, as I
9 mentioned a second ago, we didn't define this
10 term, we didn't set a threshold, but we provided
11 some criteria that states can use when they're
12 thinking about how to define this within their
13 states, which we think sets a floor for what the
14 state would have to include, but allows states
15 discretion to figure out what actually makes sense
16 in their context and with their population.
17 So, we think this is a reasonable way
18 to try to take into account the needs of the state
19 and also the comments we heard in the first
20 session.
21 So we think the state should identify

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1 the language that's most commonly spoken other
2 than English by its English learners, and, based
3 on comments from a lot of you, I think Lara,
4 Thomas, Leslie, Aaron, a lot of you had the same
5 kind of comment, they should think about the
6 diversity of languages spoken. We think that it's
7 important that the state consider other languages
8 spoken in pockets in the state. So we tried to
9 make that clear in our description that you
10 should -- that the state should take that into
11 account in identifying the languages that are
12 present to a significant extent.
13 With that I'll stop and see if we want
14 to have a discussion on that aspect. So, you
15 know, it covers through most of Page 3.
16 MS. PODZIBA: So I will open up the
17 floor for discussion.
18 Delia.
19 MS. POMPA: I'd like to start with a
20 couple of questions. First, and you may have
21 answered it when you talked about the meaning of

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1 A, "ensure that the use of appropriate
2 accommodations do not deny," blah, blah, blah.
3 I was being hopeful that that included
4 access to instruction in that language, because we
5 did talk about the fact that it's meaningless to
6 assess a student in a language if he's not being
7 instructed in that language. But in how you
8 described it, you're actually not talking about
9 that. Are you?
10 MR. ROONEY: I don't think so, but can
11 you clarify what you mean or how you would try to
12 capture that within the regulations?
13 MS. POMPA: Well, in the criteria for
14 developing these Native Language Assessments, for
15 example, you don't talk about validity or you
16 don't talk about aligning them with standards. I
17 don't know if that's because you think it's
18 connected elsewhere in the law, but it's not
19 specifically stated here that if you're using
20 native language assessments they should also be
21 aligned with standards and there should be some

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1 connection to instruction.

2 MR. ROONEY: So to the first point, and

3 if you look at on Page 2, (f)(1), where we say "in

4 general," underlined, at the very top of Page 2,

5 of the proposed text.

6 MS. POMPA: Mm-hmm.

7 MR. ROONEY: So a state must include

8 English learners in its academic assessments

9 consistent with 200.2, which that lays out all of

10 the requirements --

11 MS. POMPA: Ok.

12 MR. ROONEY: -- that the test be valid

13 and reliable, follow the principals of Universal

14 Design for Learning and other aspects, to make

15 sure that the test is valid and reliable for all

16 English learners.

17 MS. POMPA: Ok.

18 MR. ROONEY: And then the rest of it

19 that follows would be, you know, if they a native

20 language version of the test, it would have to

21 make sure it's meeting here what's in (f)(1) about

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1 the test being valid and reliable and other
2 requirements to meet the national professional
3 testing standards.
4 MS. POMPA: Thank you.
5 The second question has to do with the
6 provision that, at a minimum, if there are thirty
7 percent of English learners in a state that speak
8 a single language that the issue be considered.
9 Do you have the data on what language that would
10 be in how many states, where there are thirty
11 percent speakers?
12 MR. ROONEY: So, you remember the last
13 time we had some supplemental materials that were
14 in your binders?
15 MS. POMPA: Mm-hmm.
16 MS. PODZIBA: They're in your binders
17 again. So if you look, the landscape of the
18 chart, I'll hold it up. It's very small. You
19 can't see my copy. But it shows by state from our
20 most recent data that we have available at
21 different thresholds what languages would be

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1 thirty percent of the population.

2 So just to remind you, in order to read

3 this chart, you have to look at the state, go over

4 pretty far along the thirty percent, and that

5 means at least thirty percent of English learners

6 in the state speak that language.

7 MS. POMPA: So really it's Spanish and

8 Yupik? I mean, we're not talking about a whole

9 lot of languages.

10 Ok, I just wanted to clarify that.

11 Thank you.

12 MS. PODZIBA: Ron?

13 MR. HAGER: Hi, Patrick, and thank you

14 for including the appropriate accommodations.

15 Because it's English, and maybe this

16 would be covered under 200.2, General Criteria,

17 but I mean, there's two different types of

18 accommodations for English learners, both the

19 accommodations as an English learner, like you

20 talked about how some of the assessments have the

21 available glossaries and other types of things,

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1 and then we have a whole other set of
2 accommodations for English learners who are
3 students with disabilities.
4 So when you have that general phrase in
5 B -- I'm sorry, A, the capital A, Appropriate
6 Accommodations, and maybe we should clarify bold
7 type -- I'm asking a question, more of a
8 clarification type question. Is there somewhere
9 else that would refer to the accommodations as an
10 English learner versus as a student with a
11 disability, or do we need to have both referred to
12 here or somewhere in this material?
13 I know we want both to be available,
14 and they are available, so I just want to, you
15 know, clarify how that would fit in.
16 MS. RIGLING: What language would you
17 propose?
18 MR. HAGER: Maybe "appropriate
19 accommodations both as a student with a disability
20 as applicable and as an English learner". In
21 other words, I would put in both here, some

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1 explicit reference to both. Or make the reference
2 appropriate -- like we did in the math thing,
3 appropriate accommodations under 200.6, maybe make
4 the reference to 200.6, and I don't know if that
5 would cover both the ELL and the student with
6 disability. I know it would cover the student
7 with disability.
8 MR. ROONEY: This bullet is 200.6. So
9 it becomes 200.6(f). So you've got 200 A through
10 E is focusing on assessments for students with
11 disabilities, and then (f) is assessments for
12 English learners. So they end up being the same
13 piece.
14 MR. HAGER: Right.
15 MR. ROONEY: Kay and I were looking at
16 it trying to figure out whether the appropriate
17 accommodations would capture the need that this is
18 the accommodation that's appropriate for the
19 student. It doesn't say it's an accommodation for
20 their English learners' status. It's just says
21 appropriate accommodation.

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1 So I'm not sure whether that needs to
2 be clarified or whether that would be enough on
3 its face to be clear, that it would be heard, if
4 you're an English learner with disabilities, that
5 it would cover whatever the accommodation is
6 needed for the student to take the test.
7 MR. HAGER: Maybe say something like
8 that that for whatever accommodations would be
9 needed to take the test for that individual
10 student.
11 MS. POMPA: Well, I think if you had
12 somewhere in 200.6 a clear delineation between
13 accommodations for English learners and
14 accommodations for children with disabilities,
15 then you could refer to it elsewhere.
16 You don't have to repeat it each time,
17 but it has to be somewhere that there are two
18 different kinds of accommodations.
19 MS. PODZIBA: Lara, is your point on
20 this issue?
21 MS. EVANGELISTA: Yes. I think it

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1 could be easily confusing in terms of the
2 accommodations and I'm also wondering, if we don't
3 clarify that we're talking about two groups of
4 students, or a group and a subgroup, and I'm
5 wondering, where do people -- I mean, is it in the
6 Guidance document where there are specific needs,
7 specific kinds of accommodations are given to
8 people? Is that something that goes in the
9 regulations or is that in a Guidance document, in
10 terms of the extent of time, dictionaries or
11 glossaries? Is that something we would include
12 here or in another document?
13 MS. PODZIBA: Patrick.
14 MR. ROONEY: So, Lara, to your point,
15 that is not something the Department generally
16 regulates on. We create the requirement that
17 states determine the appropriate accommodations
18 for their assessments. We don't regulate on what
19 those accommodations can or must be, that we leave
20 that up to the state's discretion that, as they
21 design their assessment system, to make sure that

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1 they're designing the test to be accessible, and
2 where the test isn't accessible, they're
3 identifying the accommodations kids need and then
4 doing the appropriate research to make sure that
5 those accommodations are appropriate and providing
6 guidance to IP teams on how to select the
7 appropriate accommodations.
8 So generally speaking, identifying
9 accommodations that are available would be
10 something the state would determine and it would
11 vary from one state to the next. They're not
12 necessarily all the same accommodations that are
13 provided by all states. There are some
14 accommodations that I would imagine most states
15 provide, but there are some that may be unique to
16 one state versus the other, and it may depend upon
17 what the test is measuring and how they're
18 measuring it on the test.
19 MS. EVANGELISTA: So then I wonder if
20 we want to have something in there, like
21 "appropriate valid accommodations" or

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1 "accommodations based on research," or you know,
2 for these groups of students, I just think
3 something a little bit clearer. But, you know, to
4 pick and choose accommodations -- I don't know. I
5 wonder if we need to be a little bit more specific
6 there about the kinds of accommodations.
7 MS. PODZIBA: Richard, is your comment
8 on this point?
9 MR. POHLMAN: Yes. I actually think
10 that, to Ron's original idea, as well as what Lara
11 is just saying, it strikes me as something that
12 could be better explored in Guidance and better
13 articulated through Guidance than in regulatory
14 accommodations...
15 So allowing for the appropriate
16 accommodation category to be broadly interpreted
17 and then for states to be guided to include both
18 accommodations available for persons with
19 disabilities but also ELL accommodations.
20 It just seems to make more sense than
21 to over regulate or over proscribe here to allow

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1 the state for the flexibility for providing most
2 amount of appropriate regulations, not to narrowly
3 define that issue.
4 MS. PODZIBA: Ron?
5 MR. HAGER: The first thing is I did go
6 through and try to find an answer to Lara's point,
7 and the general point -- and Delia's. I see
8 specifically references to the process for
9 determining accommodations for students with
10 disabilities as a whole process spelled out, which
11 we're going to be getting to when we get to
12 question 4(a). So there has to be regulation on a
13 lot of that. It's just a question of what we'll
14 say.
15 But the issue of accommodations for
16 English learners, I didn't see any reference to
17 that in 200.6. So, I don't know if we necessarily
18 have to have a lot of detail on that one, kind of
19 picking up on your point, but I think we should
20 have some reference to accommodations for English
21 learners somewhere, and that would seem to make

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1 the most sense to do it here.

2 So you could put in "appropriate

3 accommodations for students with disabilities and

4 other appropriate accommodations". It could be

5 something that open-ended, but I think we want to

6 have some clarification that the accommodation

7 phrase has got two different groups that it refers

8 to, and since we're using it here, it makes the

9 most sense to me to make that clarification here.

10 MS. PODZIBA: Liz?

11 MS. KING: Yeah, I just wanted to first

12 make sure that when we're referring to

13 accommodations provided for students with

14 disabilities that we're specifically making

15 reference to those accommodations they're eligible

16 for, under civil rights, under IDEA, in Section

17 504 of the IDEA.

18 MS. RIGLING: I think Judy's text, it

19 talks about paragraph B in this section, which

20 talks about the students with disabilities who are

21 eligible for the accommodations. To your point,

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1 Liz, I think that does it.
2 It seems like to address Ron's point,
3 there needs to be something before the discussion
4 of students with disabilities about
5 accommodations, I don't know the right language,
6 with respect to English proficiency, or --
7 MR. HAGER: Something like that.
8 MS. PODZIBA: Do others have comments
9 on this proposed language change?
10 MR. RIGLING: What about "with respect
11 to their status as an English learner," and then
12 maybe "and if applicable"?
13 MS. JACKSON: So I'm just wondering,
14 there doesn't seem to note anything about who is
15 making these decisions. So with students with
16 disabilities under IDEA or students under 504
17 plans, it's clear who is responsible for making
18 these decisions. And I'm not saying that we need
19 to be prescriptive in who is responsible, but
20 there should be some clarification, so it's not
21 just anyone who speaks Spanish is given a

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1 dictionary or a test in Spanish.

2 It just seems to me to be very vague in

3 a way that is open for lots of not great

4 practices.

5 MS. PODZIBA: Kay or Patrick, can you

6 revise that to bring in that issue, or is it

7 covered somewhere else?

8 MR. ROONEY: So I think there is

9 guidance to the data for 504 that is released on

10 accommodations for English learners. I don't know

11 how to revise that point in this Paragraph A with

12 respect to English learners in particular, since

13 there isn't the equivalent of an IEP team or a 504

14 plan that would help.

15 Do you have any proposals?

16 MS. JACKSON: I don't have any at this

17 moment, but I would like to kind of flag it as

18 something that we shouldn't just completely forget

19 about and would be open to discussing with

20 somebody else who feels like they had ideas on the

21 issue.

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1 MS. PODZIBA: Any other comments on
2 this proposed revision? Kerri?
3 MS. BRIGGS: This isn't a new issue, so
4 there has to be answers on this already. States
5 have been giving Spanish language assessments and
6 others, so somewhere this information exists.
7 It's just maybe figuring out where and how to
8 reference it.
9 MS. PODZIBA: Is there anyone for whom
10 this language even -- yes, Ron?
11 MR. HAGER: Looking at what you've got
12 written there, you probably could take out "and
13 other appropriate accommodations". I think what
14 we could say is "for students with disabilities in
15 accordance with," so knock out that "or".
16 So we don't want to add language. It
17 just makes it clear, which dealt with Lara's
18 point. We already covered it in 200.6, so we just
19 need to make a reference to students with
20 disabilities, and that does it.
21 MS. PODZIBA: Janel?

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1 MS. GEORGE: Sure. Just to be very
2 clear, I wonder if we should say "if applicable
3 for English language learners with disabilities,"
4 instead of "students with disabilities".
5 MS. PODZIBA: Is anyone not ok with
6 this and Audrey's point outstanding?
7 Delia, yes.
8 MS. POMPA: Could I reserve? I'd just
9 like to find a place where you could put in a
10 specific mention of English learners in 200.6,
11 because it says "other acts," but it's not very
12 clear, and given the increase in this population
13 and the importance they have taken on within this
14 law, I think there should be some mention of
15 English learners specifically.
16 So I'm willing to sort of talk with
17 folks later about how that could be done. It
18 doesn't have to be long, just a specific mention.
19 MR. ROONEY: Delia, are you referencing
20 200.6(b) where we talk about --
21 MS. POMPA: Two hundred point six.

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1 MR. ROONEY: So this is 200.6(f).
2 That's where this full issue paper will fit in 3200.6.
It will go --
4 MS. POMPA: Right, but I'm saying you
5 could take care of it if you put it in the General
6 Introduction in 200.6, which is 200.6(a).
7 MS. RIGLING: Something --
8 MS. PODZIBA: Your mic's not on.
9 And thanks for reminding me. Could
10 everybody speak a little bit more into the mics
11 because the audience has been saying they've been
12 unable to hear.
13 Sorry, Kay.
14 MS. RIGLING: Delia, are you
15 suggesting -- it would be in 200.6(b). Are you
16 suggesting that we add something? Right now that
17 section talks about accommodations for students
18 with disabilities. Could we say "including
19 English learners with disabilities" to make it
20 clear at least that they are encompassed
21 specifically in that section?

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1 MS. POMPA: I was talking about A,
2 which in general talks about accommodations.
3 Because if you put in B, it's only English
4 learners with disabilities, and a mention of
5 accommodations for English learners is a very
6 separate kind of thing than accommodations for
7 students with disabilities. They are two
8 different kinds of accommodations.
9 That's why I was saying, if you could
10 specify them under A, then you wouldn't have to
11 put it anywhere else because you've already
12 mentioned it there.
13 MR. ROONEY: Just for others, so if you
14 look at the package, the red-line version of it,
15 it would be on Page 12. Line 5 is where we start
16 200.6(a), where it says "students eligible under
17 IDEA and other acts". So you're talking about
18 adding in maybe a number four underneath there
19 that would talk about English learners?
20 MS. POMPA: Yes.
21 MS. PODZIBA: Do you want to do that

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1 language offline and bring it back?

2 MS. POMPA: I'm happy to do that.

3 MR. ROONEY: I think that would work.

4 MS. PODZIBA: Alright, let's hear some

5 new issues on this package.

6 Rita.

7 MS. AHRENS: Thank you.

8 I just want to address on Page 3 in

9 terms of the definition of "languages to a

10 significant extent," Section D, where it's talking

11 about the thirty percent -- "considering languages

12 other than English spoken by at least thirty

13 percent of English learners in the state," I would

14 like to suggest that we actually put in also a

15 population threshold there.

16 If you look at states like California,

17 which is extremely diverse, it has, you know,

18 twelve percent of its population are

19 Asian-American Pacific-Islander students, not a

20 single Asian-American Pacific-Islander language

21 qualifies under this thirty-percent rule.

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1 So taking a look, for example, at
2 Vietnamese students, that's three hundred thousand
3 English language learners who would be denied a
4 language assessment in their native language.
5 And so I think we have to consider in
6 these regulations, you know, large states with
7 tremendous diversity, like California, which would
8 not be impacted by this threshold, as well as some
9 of the smaller states that may have thresholds
10 larger than here, where they have the majority of
11 the students may be Spanish speaking, which I
12 think is about seventy-five to eighty percent in
13 most states.
14 So under that scenario, your suggestion
15 of a thirty-percent threshold I think really
16 doesn't address the needs of a lot of
17 English-language learners who are not Spanish
18 speaking.
19 So I would propose that we put in a
20 five-thousand-percent threshold. As you can see
21 in here, that increases the number of languages in

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1 a number of states, but not in every state. And I
2 think when we're talking about serving at least
3 five thousand of your English-language learners of
4 the particular language, that is not a huge
5 request. I want you to consider Title VI which
6 does ask that we ensure that students are not
7 discriminated against based on race and national
8 origin. I think we would come up against a lot of
9 Title VI complaints if this threshold were so
10 high.
11 MS. PODZIBA: So could you repeat your
12 proposal?
13 MS. AHRENS: I would like to propose a
14 threshold of adding in "five thousand students"
15 within that language.
16 MS. PODZIBA: So "consider languages,"
17 is that D? Is that where you're proposing that?
18 MS. AHRENS: Yes, correct.
19 MS. PODZIBA: "Consider languages
20 spoken by other than thirty percent of English
21 learners in the state, or five thousand" --

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1 MS. RICKER: "Five thousand students".

2 MS. PODZIBA: "Or five thousand

3 students".

4 Ok, discussion on that proposal.

5 Aaron?

6 MR. PAYMENT: So I'd be remiss if I

7 didn't do a very quick primer in understanding, as

8 I used the term sovereignty earlier, and then get

9 into your proposal, because I think our issue is

10 even more micro than that.

11 So when you look at our population, so

12 I used the term sovereignty earlier, and I just

13 threw it out there, state sovereignty, and our

14 sovereignty originates -- it predates the

15 Constitution in the Northwest Ordinance, but it's

16 memorialized in the Constitution in Article 1,

17 Section A, Paragraph 3. That is the origin also

18 of state sovereignty, and it's the commerce clause

19 that its to regulate commerce with foreign nations

20 among the several states and with the Indian

21 tribes.

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1 So we're not subordinate to states, and
2 sometimes we have to remind states of that, but we
3 also believe that we're at par with coordinations,
4 and the original negotiations and treaties --
5 because we don't do treaties between the federal
6 government and the state. We do treaties with
7 foreign nations. So we're at par with the foreign
8 nation. It's reinforced in treaties and court
9 precedence, and I also referenced last time the
10 Executive Order of the president is to do
11 consultation.
12 So our sovereignty is at par or
13 stronger than state sovereignty, according to
14 legal precedence. But I wanted to get that out.
15 But I also wanted to come back to, when
16 we're talking about percentages of the population,
17 so this is kind of a sensitive issue for us, too.
18 We had nearly ten million -- excuse me. I'm not
19 getting choked up. It's a cold. It's a cold from
20 last time.
21 We had nearly ten million American

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1 Indians in what's now North America prior to
2 intervention. Based on forced assimilation
3 policies, the introduction of smallpox, the
4 reservation, all of that, in nineteen hundred we
5 were only a hundred thousand people. And today
6 we're back up to close to five million again, so
7 we have over three hundred languages. They're
8 distinct languages. Within those languages we
9 have hundreds and hundreds of dialects. So, the
10 best way to have other people understand this is,
11 it's like French, Spanish, German. Those
12 languages are all of some origin with Latin, but
13 they're very distinct and different.
14 So when we start slicing up the number,
15 you know, we have very small pockets that either
16 speak Ojibwe or Navajo, or the different languages
17 in this country.
18 So I'm wondering and I'm concerned
19 about making sure that that we include language.
20 While I support the concept that you bring up,
21 that blocks us out in our smaller communities

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1 where we're doing language instruction.

2 My nation has forty-three thousand

3 people.

4 How many does yours have?

5 MS. HARPER: Ten thousand.

6 MR. PAYMENT: Ten thousand? And we're

7 big compared to other nations. There's some

8 nations that only have a couple hundred. So we've

9 got to find the right language that doesn't

10 unintentionally put us out of the game.

11 MS. PODZIBA: Are you on other issues,

12 or on this issue?

13 MS. RICKER: Nope, this one.

14 MS. PODZIBA: Mary Cathryn.

15 MS. RICKER: Thanks.

16 I had a question, and Delia first

17 brought it up as well, is thirty percent a

18 commonly-used threshold in other places, and why?

19 MR. ROONEY: So I think we were trying

20 to come up with some criteria for states that

21 seemed reasonable. I don't know that thirty

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1 percent has a particular specific threshold where
2 it got selected other than it seemed like a
3 reasonable floor to set.
4 Just to be clear, this would not
5 preclude a state from creating more
6 Native-language assessments than they would under
7 these criteria. I'd also note it doesn't require
8 that they create Native-language assessments under
9 this criteria. It establishes that this is how
10 they define what it means to have a language other
11 than English to a significant extent, and then
12 they then have to provide information about what
13 their plan is to provide assessments to the extent
14 they don't exist.
15 So, there are a couple of steps that
16 this is not necessarily the sole criteria a state
17 could use. They could adopt other criteria, then
18 create additional assessments if they wanted to.
19 We just tried to create -- when we formed our
20 criteria we tried to capture the discussion we had
21 in the last meeting.

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1 Also to Rita's point, I appreciate
2 you're adding in the number. I did want to point
3 out that in C, right above D, is where we tried to
4 accomplish that content without putting a number.
5 That's it's "languages other than English that are
6 spoken by a significant portion of the
7 participating student population and one or move
8 of the state's LEAs, or by a second portion of
9 groups of kids -- kids in the state".
10 So it did try to think about pockets of
11 students that may exist beyond the most popular
12 language in the state or the thirty percent that's
13 in A and D. So that was our initial attempt for
14 the discussion on how to try to capture that
15 content.
16 So I just wanted to remind people that
17 that was there.
18 MS. PODZIBA: Audrey?
19 MS. JACKSON: So with regard to what
20 you just said, Patrick, part C, I was wondering to
21 whom is that being reported or shared with? Is

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1 that just to the Department? I'm curious about
2 that.
3 And then I'm also just wary of any -- I
4 appreciate the need to not have one specific
5 number threshold in part because a language spoken
6 doesn't necessarily again mean the best language
7 to assess in. So, I've had numerous Vietnamese
8 students, but if I put a test in front of them in
9 Vietnamese, even though they can speak
10 proficiently with their family, would probably
11 have a much harder time than in English. And
12 likewise, there are other situations where
13 mandating English would be an issue.
14 So I guess I'm curious for part C if
15 there is any way to clarify who they would be
16 reporting to and to consider the varied I guess
17 needs of state, both for small states and large
18 states.
19 And then I have one other question. I
20 don't know if this is an appropriate time to ask
21 it. It's about this issue. So I'll just name it

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1 and we can table it if needed.

2 I'm curious with regard to what Leslie

3 and Aaron brought out, because they spoke a lot

4 about exemptions similar to Puerto Rico last time

5 that we met, and not being that knowledgeable on

6 the subject, I don't necessarily have any

7 information to understand why or why it would not

8 be considered at all or addressed, but it was

9 something I saw really missing from this piece,

10 and I would just like to learn more about it.

11 MS. PODZIBA: So that's on Page 4, and

12 we're going to get to that at some point.

13 Liz?

14 MS. KING: I just have a drafting

15 point. There's a lot of other things to say to

16 make sure that these are the right numbers, and I

17 want to be responsive of very small communities

18 and children, as well, but I think we need to say

19 something about spoken by the lesser of at least

20 thirty percent of or five thousand, just because

21 this is not meant to create a state option that

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1 they would choose, either thirty percent or five
2 thousand children, that it would be whichever is
3 smaller for that state, and to reinforce the
4 point that thirty percent of the children in Rhode
5 Island is a very different number of children than
6 thirty percent of children in California.
7 And the reason for not having -- to
8 Audrey's point, certainly we want to make sure
9 that decisions around accommodations are
10 individualized to individual children. I think
11 that continues to need to be an important piece.
12 But also to say that, you know, there
13 exists a threshold because of things like cost and
14 making sure that you have a good assessment and
15 all of that. But that's about the number of
16 children more than it is about their
17 representation in the population.
18 MS. PODZIBA: Derrick?
19 MR. CHAU: Patrick made the reference
20 to section C, which talks about the significant
21 portion of the participating student population

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1 across the grade levels, so I really do think that
2 D is probably not necessary, because that's
3 referenced in C. So that would get us away from
4 setting a certain percentage. And I just want to
5 emphasize that, at the top of Page 3 it talks
6 about the states deciding on which assessments --
7 for which year the student academic assessments
8 are not available and are needed.
9 And I feel like, I want to emphasize
10 the fact that, our districts, it's in their
11 interest to advocate for some of these assessments
12 if they have the student populations in
13 significant numbers.
14 So, I worry that by overregulating, it
15 might actually take away resource.
16 I mean, there's an incentive for
17 districts, from the district perspective, if I
18 have a significant population of Korean students
19 in LA, which we do, who are coming in already
20 educated, we would be advocating to our state to
21 ensure that we have that kind of assessment for

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1 those students.

2 So, I feel like, by overregulating and

3 setting some numbers, it might actually make it

4 more difficult. It would take away resources, and

5 I feel like we can -- I would advocate for more

6 state autonomy in this instance, because this is

7 something that local districts would be advocating

8 for on their own.

9 MS. PODZIBA: Tony?

10 MR. EVERS: Is this the right

11 direction? Absolutely. If I had a magic wand,

12 Congress would have dumped that whole math thing

13 and spent more time looking at this, providing

14 resources for this. It's really complex.

15 I can tell you, and I'll just -- a

16 quick story, I know you probably don't want to

17 listen to stories, but five years ago or six years

18 ago we worked with our Hmong community to

19 translate our state test. We put a lot of time

20 and effort in. We thought it was going to be

21 successful.

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1 As it turns out, at least in Wisconsin,
2 most of the young people, the kids that are among
3 the households speaking it, don't spend a lot of
4 time writing it Hmong. And it was pretty much a
5 failure, and the Hmong community came back and
6 said, Stop doing this. It's not going to work.
7 And so we stopped doing it, and it's worked out, 8
but...
9 I just think this is just so complex,
10 and I understand all the issues. I really do. I
11 think it's critical. But by gosh, I just don't
12 know if we can address this in an appropriate,
13 substantive way through regulation.
14 If I had another magic wand, I'd say,
15 All that innovation testing money you have should
16 be going to creating these tests so that we can
17 assist districts in that responsibility.
18 So I'm just expressing my concern, my
19 support, but I'm telling you I think this is going
20 to be extraordinarily difficult to accomplish via
21 regulations.

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1 MS. PODZIBA: Leslie?

2 MS. HARPER: I talked at the last

3 meeting about the different definitions of English

4 learners, and we have a lot of different

5 constituencies sitting around the table and we

6 have a lot of terminology going on. So one thing

7 that I wanted to remind people about was the very

8 distinct definition of Native American languages.

9 In this law, Native American languages

10 are described already in another title. So when

11 we're going back and forth talking about native

12 languages and Native American languages, there are

13 very specific protections that are Native American

14 languages and are Native American language medium

15 schools already hold in other titles of this law.

16 And what we're talking about is

17 aligning those portions. In this section it's B.

18 If we look on page twenty of the red-line piece,

19 Line 1, this is just a small point, we can cross

20 out, "slash Alaska Native English learners,"

21 because the term "Native American languages," as

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1 defined in the Title III already describes and
2 includes Native American tribes, Alaska natives
3 and Hawaiian native languages.
4 So you can cross out "slash Alaska
5 native," because otherwise that gets to be really
6 exclusive of our places that are already
7 protected.
8 I agree with the proposal to strike
9 paragraph E, "consider languages other than
10 English spoken by at least thirty percent of the
11 English learners in the state". This affects our
12 native American tribal populations, quite
13 negatively.
14 Aaron has spoken about our population
15 depths and regrowths over the last couple of
16 hundred years, and we've been working on this
17 issue for a while and have been told that we're
18 statistically insignificant. We have small end
19 size. However, to my local tribe at home, that
20 has not been significant.
21 This is highly significant in that our

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1 tribal education department and that our tribes in
2 consultation with all of the agencies are able to
3 prioritize our educational delivery systems in our
4 tribal languages in a way that is comparable to
5 what states are producing. Because what states
6 are doing has not been working.
7 But that idea of thirty percent, if we
8 look at the data that was presented to us, the
9 supplemental data, the only native language that's
10 represented there is Eubic. However, I can assure
11 you there are hundreds of native languages being
12 used and being spoken and being developed for
13 academic content delivery.
14 We now have seventeen states that are
15 participating in native language medium education.
16 So, we're talking about, you know, a growing
17 population of Native American language medium
18 schools.
19 Also, when we talk about this, we're
20 not talking about all Native American students.
21 We're talking about native language -- Native

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1 American language medium students. So it's a
2 tiny, tiny, tiny population of all of our Native
3 American American students across the country.
4 Most of our Native American students are in
5 English medium schools, but we do have places
6 where our tribes have decided to provide all of
7 the academic content through the medium of a
8 Native American language.
9 So I just really need to press that
10 definition and the inclusion of that. Because
11 again, if our tribes are making that decision and
12 working with the states and working with ED here
13 to provide these programs of instruction, and we
14 have made the priority to provide a program of
15 instruction in our Native American language, it
16 doesn't make sense to be providing assessments in
17 English language of any of our content.
18 So, we just want to -- we just really
19 want to stress that, you know, that very unique
20 definition, that very unique relationship and
21 understand that that definition exists already and

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1 that we can figure out ways to do these
2 assessments.
3 But I would stay strike that on Line 1.
4 I'd be fine with striking paragraph B, because
5 that "at least thirty percent," you know, has been
6 addressed in part C, and we said that.
7 Or if you want to leave it, then cross
8 out, on Line 7, cross out "and," because if you
9 put "and," D, "consider languages other than
10 English spoken by at least thirty percent of the
11 English learners in the state," then it starts to
12 look like, Oh, you do all this "and", you know,
13 provide this thirty percent threshold, which there
14 are no "and's" in any of the previous paragraphs.
15 MS. PODZIBA: Can I take up those
16 proposals, Leslie?
17 MS. HARPER: Thank you, yes.
18 MS. JACKSON: I have a quick question.
19 MS. PODZIBA: Sure.
20 MS. JACKSON: I didn't have Issue Paper
21 Six in my binder, and so then we got one from the

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1 back table, but it doesn't have the same
2 corresponding pages. So, when I go to Page 20
3 that's not there.
4 Is it possible to get a copy of what's
5 in the binder.
6 MS. PODZIBA: So you need a red-line
7 version? Anybody else missing that?
8 MR. ROONEY: Sorry about that.
9 I will say that Leslie's comments that
10 she's talking about are all actually still in
11 Issue Paper 5A also.
12 MS. PODZIBA: Ok, alright.
13 MR. ROONEY: She was talking about on
14 Page 3, capital B, a little bit more than halfway
15 through, the end of that where it talks about
16 "Native American slash Alaska Native English
17 learners," she was suggesting deleting Alaska
18 Native". And then further on --
19 MS. PODZIBA: Ok, let's take that one
20 up first.
21 Is there anyone who has a concern about

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1 deleting "Alaska Native" from that sentence? So
2 that it would read, "who were not born in the
3 United States and Native American English
4 learners".
5 Yes?
6 MR. PAYMENT: Principally I agree with
7 what she's saying, but I just want to double- check
8 with the NCAI. Because I know Alaska natives are
9 very sensitive to being left out, and so that
10 might have been drafted for that purpose.
11 But I agree that it's already provided,
12 and so when we have to modify it -- and then we're
13 leaving out Hawaii, Hawaiian natives. And so
14 we're moving towards that.
15 So I think that her language does --
16 what she's proposing does it. I just want to do
17 one final check, and I can do it today.
18 MS. PODZIBA: Ok.
19 MR. PAYMENT: To make sure we're not
20 unnecessarily spending a lot of time on this.
21 MS. PODZIBA: Sure that's fine.

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1 Leslie?

2 MS. HARPER: Ooo, one point: "Native

3 American language medium."

4 MR. PAYMENT: Yeah.

5 MS. HARPER: Because it's different

6 than "Native American ELLs".

7 "Native American language medium

8 students".

9 MS. PODZIBA: Not "English learners"?

10 MS. HARPER: If it flows any better,

11 you can say "ELL's who are Native American

12 language medium students".

13 I mean, but we want to be very specific

14 that this is a consideration for Native American

15 language medium students.

16 MR. PAYMENT: It's a narrower

17 population.

18 MS. PODZIBA: Comments on that

19 proposal?

20 Janel.

21 MS. GEORGE: Sure. And Aaron, I know

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1 you said that you're checking the statute. I
2 wonder if we could just cross-reference the
3 statute, as defined in the statute or something.
4 MS. PODZIBA: I didn't understand that
5 you were checking the statute. I thought you were
6 checking with some people.
7 But does citing the statute solve the
8 problem?
9 MR. PAYMENT: Yeah, because then it
10 should be inclusive of Alaska natives and Hawaii.
11 MS. PODZIBA: Kay, are you checking on
12 that, as well?
13 MS. HARPER: It's NALA of 1990,
14 109-477.
15 MR. ROONEY: Sorry, repeat that,
16 Leslie.
17 MS. HARPER: It's the Native American
18 Languages Act of 1990. I think its PL-109-477.
19 I'm looking it up right now.
20 MR. ROONEY: We're looking up the
21 definition.

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1 MS. RIGLING: We understand that
2 there's a definition in the ESSA and it says
3 "Definition of Native Americans and Native
4 American language: The term Native American and
5 Native American language has the same meaning
6 given those terms in Section 103 of the Native
7 American Language Act of 1990".
8 MR. ROONEY: So sorry, your point,
9 Leslie, then, if we just used that, say "Native
10 American and Native American language" -- I don't
11 know how to conclude that definition.
12 Would it be "and Native American
13 students as defined in" -- and reference that law?
14 MS. HARPER: I think that does it.
15 MS. PODZIBA: So we will get that
16 cleaned up and get the precision needed.
17 MR. PAYMENT: So, if it is already in
18 the new language, all you have to reference is
19 that section of the new language.
20 MS. PODZIBA: I think that's what
21 they're proposing is to reference that section of

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1 the ESSA.

2 MS. RIGLING: Eighty-one O one.

3 MS. PODZIBA: Any other comments on

4 this issue?

5 Aaron, Derrick?

6 Ok, Aaron?

7 MR. PAYMENT: So on the issue of trying

8 to come up with a percentage --

9 MS. PODZIBA: No, no, I want to hold

10 off on that one.

11 MR. PAYMENT: Oh, ok. Oh, on the

12 native language.

13 MS. PODZIBA: I just want to stick with

14 this one.

15 Derrick.

16 MR. CHAU: I just had a clarifying

17 question. Because, what they brought up around

18 Native American languages makes me think of our

19 dual emersion programs that we have in many of our

20 schools, where students are not English learners,

21 but their language of instruction is in another

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1 language. And I know in those instances in those
2 schools they have been requesting translated
3 versions of the assessments, as well.
4 So, I'm not sure if that exists
5 somewhere else in the regulations. It's just a
6 clarifying question, because I don't know how that
7 might be addressed, because it sounds like it
8 overlaps with some of what they were talking
9 about.
10 MR. ROONEY: Give us a second to look
11 at the statute.
12 I think actually the Native language
13 translations are for English learners who have
14 been in schools for less than three years.
15 MS. POMPA: It falls under the
16 accommodations.
17 MR. CHAU: I know that's not part of
18 what this regulation is dealing with when it comes
19 to English learners and assessment, but I was just
20 clarifying, it did seem to overlap some of what
21 they were talking about.

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1 MR. ROONEY: Can we come back to that?
2 We will try to look at the statute.
3 MS. PODZIBA: Ok. The other proposal,
4 there is a proposal to delete paragraph D. That's
5 another proposal on the table.
6 And I'm just going to get people who
7 haven't had a chance to speak.
8 Alvin.
9 MR. WILBANKS: I just have a question
10 in reference to Page 3, under four. It gives four
11 terms. There are three of them. One of them I'm
12 sure of. I think I understand what that means.
13 And the other three are "consider". Are those
14 equal? They appear to be parallel. You've got to
15 do all of those, or is the first one what the
16 state has to do? Or what's the interpretation of
17 this?
18 MR. ROONEY: So, A, B, C and D all come
19 under romanette four.
20 MR. WILBANKS: Four.
21 MR. ROONEY: So the state at a minimum

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1 must include A, B, C and D. So they must include
2 the most popular language. They must consider
3 languages other than as spoken by a distinct
4 population of English learners. They must
5 consider languages other than those spoken by a
6 portion of sitting LEAs. And they must consider
7 languages other than English spoken by at least
8 thirty percent.
9 So, I think actually that might have
10 been to Audrey's point, about "and" means that A,
11 B, C, and D all apply to romanette four.
12 MR. WILBANKS: How does that factor in
13 with the student, the English learner that comes
14 in for less than a year? They have three years
15 under accountability, but in terms of offering
16 them assessments in their language, how does this
17 play in?
18 MR. ROONEY: So, Alvin, your question
19 is about recently-arrived English learners. I
20 want to make sure we're not completing issues.
21 A different part of the statute says

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1 that students who are recently arrived, they have
2 been in schools in the United States for less than
3 a year, have to take the math and science test if
4 they're in a grade that gives science. And they
5 can be exempt from one administration of the
6 Reading Language Arts Test. That is a separate
7 piece about whether states can have Native
8 language assessments.
9 This provides a permission for states
10 to have Native Language translations for students
11 that they identify they need Native language
12 translations for.
13 So I think, if the state we're looking
14 at its population, they would include
15 recently-arrived English learners as part of their
16 determination of if they have a native language
17 translation, or that they don't, or think they
18 need one, which is what this section is trying to
19 get at.
20 MR. WILBANKS: So four A, B, C, D,
21 doesn't apply to the English learner that is

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1 temporary?

2 MR. ROONEY: It does. It applies to

3 all students. It doesn't -- what do you mean by

4 "temporary"?

5 A recently-arrived student could be

6 exempt from that first administration of the

7 Reading Language Arts Test, but the state could

8 decide to assess that student, and if they had a

9 native language translation, that student could

10 take the native language translation.

11 MS. PODZIBA: Ryan?

12 MR. RUELAS: I was just kind of going

13 along with what Leslie was saying and what you

14 were talking about with regards to this area and

15 area D, "consider the languages other than

16 English".

17 I do think we should eliminate the

18 numbers themselves, thirty percent or five

19 thousand. That in itself will allow more

20 flexibility at the state level.

21 MS. PODZIBA: So you're supporting the

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1 proposal to delete D?

2 MR. RUELAS: Yes.

3 MS. PODZIBA: Ok. Let's hear from some

4 others.

5 Rita?

6 MS. AHRENS: I'm concerned about the

7 proposal to delete D entirely, because as I said,

8 parents of English language learners, who are

9 thought in the majority, you know, we have an

10 obligation to ensure that the students are

11 meaningfully participating in both instruction and

12 assessments.

13 We have seen that there is inadequate

14 instruction of our English language learners based

15 on the graduation rates that we have across the

16 nation. I'm concerned that, you know, we're not

17 providing enough guidance that would lead to this

18 more appropriate and meaningful participation of

19 English language learners.

20 I think that, you know, for D, we're

21 looking at a criteria that the state should

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1 consider. It's not mandatory that they must
2 create a native-language instruction with these
3 thresholds. It's merely providing them Guidance
4 that will say, Hey, this is a threshold you should
5 consider because it's meaningful, right?
6 So the state doesn't have to create
7 that language assessment, and so I don't think
8 it's an undue burden to ask states to consider a
9 language that hits a certain threshold.
10 I would prefer to keep this in, because
11 the idea that, you know, we can look at the
12 district-level concentrations isn't sufficient,
13 because I don't want districts to have to lobby
14 the state to say, Hey, you know, our district has
15 a lot of people speaking a specific language.
16 It's a state responsibility to ensure,
17 you know, that all students within the state are
18 being able to participate in the state
19 assessments. So the state needs to provide and
20 identify which languages it's going to consider,.
21 And this might be something for later,

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1 but eventually I do want to hit another point on
2 the page, on Page 3.
3 MS. PODZIBA: Ok, let's see if we can
4 get more comments on this.
5 Tony?
6 MR. EVERS: Are you just talking about
7 D now?
8 MS. PODZIBA: Yes.
9 MR. EVERS: I'll pass.
10 MS. PODZIBA: Aaron.
11 MR. PAYMENT: So I think we found some
12 solution to the native language one.
13 But I'll hit on first, so it seems to
14 me like the solution is somewhere in either a
15 percentage or a number threshold in the district,
16 and that might seem burdensome, because when we
17 add thirty percent, that just leaves out more
18 people than it includes.
19 You know, I'm cognizant of the fact
20 because I watch national politics alot, and who's
21 going to get elected, and I know you need thirty

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1 percent of vote to get elected -- thirty percent
2 of the Latino vote to get elected president. But
3 there are many, many more people than Latinos in
4 the country, including the indigenous population.
5 So I don't know how appropriate it is
6 for us to number to pick, a percentage, based on
7 which population are we accommodating. So maybe
8 it's a percentage of -- because it has to be
9 reasonable, a percentage of the district.
10 So I think that would address your
11 concern. That would probably address our concern.
12 Then when we're ready I think we have some
13 proposed language on the native -- because we did
14 get feedback that "Alaska natives is essential" to
15 keeping us on target on that one.
16 MS. PODZIBA: Ok, so why don't you just
17 tell us that.
18 MR. PAYMENT: So Native American --
19 MS. KING: What your offer is.
20 MR. PAYMENT: "Native American as
21 defined in Section 103 of NALA, which includes

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1 Native American, Alaska Native, Native Hawaiian or
2 Native American Pacific Islander languages".
3 That's the final two in those two.
4 So I think it is important because too
5 often we're the invisible minority. We're the
6 fraction of the fraction, and then unless it's
7 specifically stated and clear, even though I agree
8 with Leslie that it's reference in the previous
9 law and in the new law, I think it needs to be
10 made clear by including the language assessment.
11 MS. PODZIBA: Could you pass that up
12 this way and we'll get it typed in.
13 Does anyone have a problem with what
14 Aaron read out?
15 So we can get that in there.
16 Kerri?
17 MS. BRIGGS: Not a problem, just want
18 to make sure it gets put in the right place.
19 This seemed like a really very nuanced
20 provision. Is there a more general place where
21 this is published for students and it first gets

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1 referenced, that would be the most appropriate
2 place?
3 I think in probably flipping through
4 the whole section of the reg -- I was flipping
5 through and trying to see if there is a better
6 focus.
7 MS. PODZIBA: How about for the time
8 being we put here, and as we go through the
9 package, if there's a better place to put it, we
10 can do that.
11 So we're still on paragraph D. There
12 are multiple proposals. There are proposals to
13 strike it. There is a proposal to add five
14 thousand. There's a proposal to incorporate it
15 somehow in C. We're still talking about that.
16 Liz?
17 MS. KING: I just wanted to reinforce
18 what Rita said and sort of say that I think we see
19 this as an opportunity to help states, districts
20 and schools meet their nondiscrimination
21 responsibilities under Title VI.

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1 The hope, and I realize certainly the
2 tension here, the hope would be that this would
3 encourage the availability of more native language
4 assessments, so that more children for whom this
5 is the appropriate accommodation would have access
6 to that accommodation.
7 I heard a concern that this would
8 reduce the availability of native language
9 assessments and would like to have more of an
10 explanation for that, and just also to remember
11 and remind us all again that this is about
12 providing accommodations that a child is entitled
13 to so that they have access to the content in the
14 school.
15 MS. PODZIBA: Delia.
16 MS. POMPA: I would like to remind us
17 that the Department responded to our conversation
18 last time that we wanted criteria.
19 As you all recall, this provision has
20 been in place for many, many, many years, and the
21 states have not taken advantage of it. And this I

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1 think is what we asked the Department for. It's
2 criteria. It doesn't say states have to do it.
3 It gives them some specific criteria for how they
4 should consider whether they should be
5 establishing these tests. It gives them
6 something -- guide posts to consider it.
7 So I am happy with this language. I am
8 happy with leaving D as it is and leaving it in
9 place.
10 As a reminder that this is a way to
11 move districts -- excuse me, not districts,
12 states. This is a state responsibility, not a
13 district responsibility. So we should accept this
14 as what it is. It's not a mandate to anybody. It
15 is a reminder of their responsibility, the state's
16 responsibility to children to have the appropriate
17 accommodations.
18 MS. PODZIBA: Marcus?
19 MR. CHEEKS: So, one of the fears that
20 I have is, working with school districts on
21 continuous bases, a lot of times they're looking

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1 for the minimum threshold, and they stop at that
2 threshold and take no action below it.
3 So, adding numbers to quantify a number
4 of languages will I think inadvertently cause
5 districts to not deal with the one child that has
6 the language that's not English. 7
8 So, I think the proposal to remove D
9 has been placed there, specifically if we're going
10 to tie numbers in the tune of specifics where five
11 thousand, ten percent, because at some point in
12 time, particularly in smaller states, those
13 numbers would fall below that and no action would
14 be taken.
15 So I think the preceding elements, you
16 know, really point states to how they can address
17 who those significant populations are, with giving
18 still the same room to not leave the one, two,
19 three smaller numbers of children on an island by
20 themselves, and where no action is taken at all.
21 MS. PODZIBA: Ryan?

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1 MR. RUELAS: Sorry, no.

2 MS. PODZIBA: Did you want to comment,

3 Lynn?

4 MS. GOSS: I was just going to support

5 taking the numbers out of letter D, as well, if

6 not striking it all together.

7 MS. PODZIBA: Kay?

8 MS. RIGLING: I just want to reenforce

9 what Delia said about what we're actually looking

10 at in this particular section.

11 It has nothing to do with an LEA's

12 responsibility to appropriately serve all of its

13 English learners with all of the instruction and

14 supports that they're entitled to.

15 This is a specific provision about a

16 state requirement to receive Title I funds, to

17 provide a statewide assessment system.

18 In this particular case, in addition to

19 making sure that that system has appropriate

20 accommodations for English learners, this is a

21 specific provision about looking at the languages

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1 that exist in the population of the states and, as
2 this criterion talks about also, significant
3 portions within the state, and to determine
4 whether the state has made its best effort to
5 provide native language assessments with respect
6 to those populations.
7 So it's a pretty narrow, in a way,
8 requirement. It's limited to state assessment
9 systems and within that native language
10 assessments.
11 So it's not going as far as some of the
12 discussion about how we assess English learners in
13 their native language, maybe at the district
14 level, or what instruction and what services we
15 need to provide them in order to meet the civil
16 rights requirements.
17 MS. PODZIBA: Ok.
18 Would there be dissent from deleting
19 paragraph D?
20 MS. AHRENS: Yes.
21 MS. PODZIBA: Ok, I'm just asking the

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1 question.

2 Would be there dissent from leaving

3 paragraph D in and adding the five thousand

4 student component? Would there be dissent from

5 that?

6 MS. GOSS: Yes.

7 MS. PODZIBA: Ok. Would there be

8 dissent from leaving the paragraph in as written?

9 Yes?

10 Ok, so let's just mark this as

11 outstanding. I think we've had a full discussion

12 of it, and we'll keep going.

13 Patrick, could you take us through the

14 next section of this.

15 MR. ROONEY: I think Rich has a comment

16 he wanted to make.

17 MS. BRIGGS: Are we moving off this

18 issue paper?

19 MS. PODZIBA: No, we're moving further

20 into it. Just off D.

21 MR. POHLMAN: Very good. I thought you

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1 were moving off the issue paper.

2 One other thing I wanted to say, mine

3 is actually quick --

4 MS. PODZIBA: Wait, are you going to

5 talk about something else in the issue paper?

6 MR. POHLMAN: Yup.

7 MS. PODZIBA: Alright, so I'm going to

8 ask Patrick to present it first, and then we'll

9 open it up for discussion.

10 MR. EVERS: Are we leaving this one?

11 MS. PODZIBA: We're leaving D. We're

12 leaving paragraph D.

13 MR. POHLMAN: My issue is actually on

14 Page 2.

15 MS. PODZIBA: Patrick, maybe take us

16 through the rest of the paper and we'll open up

17 discussion by page.

18 MR. ROONEY: That's great. I was

19 actually going to flag for everyone that I wasn't

20 planning to walk through the rest of what's here

21 in Issue Paper 5A, because the rest of the

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1 language is essentially just making technical
2 changes to what is in the existing regulations
3 where we added in new statutory citations.
4 I don't know that it's worth walking
5 through. I'm happy to answer questions if people
6 have them, but there is nothing in particular that
7 I wanted to flag and to discuss with this group.
8 So I'm happy to go back at any point.
9 MS. PODZIBA: So the whole paper is
10 open for discussion. New issues.
11 Richard, Page 2.
12 MR. POHLMAN: Sure. I am just wondering
13 if there's a space in Guidance, under F(b) there,
14 "to the extent practicable".
15 When you talk about mastery of skills,
16 one thing we mentioned before was the use of
17 growth, increasing use of growth against academic
18 content areas, and if there's an option within
19 Guidance to at least go back and emphasize that
20 states should also be considering measures of
21 growth as well as mastery of skills, as far as

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1 proficiency and growth.

2 But I don't know, maybe I'm missing

3 something, but...

4 MS. PODZIBA: Ok. New issue, Rita?

5 MS. AHRENS: On Page 3, it is I guess

6 in red, under number three, "As applicable an

7 explanation the reason the state has not been able

8 to complete the development of such assessments

9 despite making every effort..." I would like to

10 add to that a timeline for when the state will

11 address the outstanding issues with the

12 development of such assessments.

13 MS. PODZIBA: Could you repeat that

14 proposal?

15 MS. AHRENS: Sure. It's in number

16 three. It's just adding a timeline for addressing

17 the -- a timeline or strategy for addressing the

18 lack of those assessments.

19 MR. ROONEY: And Rita I think, if you

20 read, so one, two and three fit together. So you

21 look right above it. And number one is the

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1 state's plan and timeline. And then number two is
2 the description of the process together input.
3 And then the three is the explanation provided.
4 They can't do it if they say, or -- you
5 know, for whatever reason they cannot develop
6 assessments in those languages that they are
7 present to a significant extent, as defined by the
8 state, then the state has to describe the reason
9 for that.
10 But --
11 MS. AHRENS: Yeah, I wasn't sure if
12 number one, because it's the same -- because it
13 was number one applied to number three. So I
14 wanted that clarity.
15 MR. ROONEY: Well, I think the way we
16 wrote this would be, for your proposal, for your
17 discussion would be, first the state identifies
18 the languages that are present for which languages
19 translated tests are not available. And then they
20 have to develop -- they have to describe the plan
21 and timeline for developing those assessments that

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1 they have identified and the description for how
2 they're going to gather input on that.
3 And in the case that they cannot,
4 they're unable to complete develop of such
5 assessments, despite making every effort, I think
6 that would be their answer. They wouldn't have a
7 plan and timeline for doing it, because they would
8 say "we're unable to," and "here's the efforts we
9 made and here's why we cannot do it".
10 MS. AHRENS: Can we then amend it to
11 say that the state will provide a strategy for how
12 they will appropriately accommodate those
13 students, which, if they're not being given those
14 assessments, there has to be some sort of strategy
15 to address those students' needs in terms of
16 assessment accommodations.
17 MS. PODZIBA: Patrick?
18 MR. ROONEY: I think we'd love to hear
19 more discussion on that proposal.
20 MS. PODZIBA: So it would be -- is that
21 to add a four, let's say, a strategy for

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1 accommodating those students?

2 MS AHRENS: Right. Because if I'm

3 understanding what Patrick a saying, the state

4 identifies the assessments that they are going to

5 develop, and then they define or explain why they

6 can't for certain languages, but I'm concerned

7 about what we do for the students in those

8 languages that we cannot develop native language

9 assessments for.

10 Because obviously they need a native

11 language assessment, but you can't develop it

12 because there are, you know -- you just can't for

13 whatever reason make the test valid or reliable,

14 we have to provide other accommodations for the

15 students whether they're taking their assessments.

16 MR. ROONEY: I mean, we could open to

17 discuss this. It seems like that would fit better

18 under number three as opposed to adding a separate

19 number four; that, if the state provides its

20 explanation in three, then the state would provide

21 their strategy for how they're going to make the

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1 test accessible.

2 I think, kind of our thinking behind

3 number three is that we know some states have

4 state law that precludes them making a native

5 language translation of an assessment, and that

6 wouldn't be a question about the size of the

7 population that needs the assessment. It's a

8 different kind of barrier the state has. I don't

9 know that we can suppose now what those potential

10 barriers might be in order to put it in a

11 regulation, or what those barriers might be in six

12 months, let alone in five or fifteen years from

13 now.

14 So I think we're trying to leave it

15 with clear expectations, but not necessarily be

16 overly prescriptive.

17 So I'd love to hear more discussion on

18 that.

19 MS. PODZIBA: Ok. Discussion on this

20 proposal.

21 Marcus?

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1 MR. CHEEKS: So I respect
2 wholeheartedly Rita's proposal, but I think it
3 almost contradicts what we're asking to have
4 happen in the preceding conversation with item D.
5 We don't address the smallest minutia group, but
6 then in explaining how the states aren't able to
7 actually provide assessments beyond making every
8 effort, we now will explain that, in the preceding
9 section.
10 It's almost as if we're letting the
11 state off the hook in one area but making them
12 explain it in another area, and I think it's
13 inconsistent to the point.
14 So, somehow they should align. If the
15 "every effort" piece is what's being addressed
16 here, then we definitely wouldn't want to go and
17 drill down after making every effort to then say,
18 what about -- or not say what about those that
19 were a lot less -- fall below that threshold.
20 I hope I'm saying that correctly. I
21 think we're -- I guess my whole point is I think

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1 it would be inconsistent in the actions between
2 sections E and 4D.
3 MS. PODZIBA: Delia?
4 MS. POMPA: My concern about having an
5 explanation of what the state is going to do if
6 they don't have a native language assessment is it
7 limits it just to that section. And native
8 languages are just one form of accommodations.
9 There are other forms of accommodations that
10 states should be using.
11 So if I were going to say that the
12 state would have to explain, Why haven't you
13 created an accommodation, I would make it apply to
14 all the accommodations, not just native language.
15 MS. PODZIBA: So it sounds like there's
16 not support for that proposal.
17 Thomas, was that on this proposal?
18 MR. AHART: It was a little broader
19 than that.
20 MS. PODZIBA: So just hang on.
21 Tony, do you have new issues?

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1 MR. EVERS: I have new issues, but I
2 wanted to get this one done.
3 MS. PODZIBA: We have new issues.
4 MR. EVERS: This is a very small thing
5 on Page 2, and then I'll leave Page 2. And this
6 is actually in -- it's in section B. It talks
7 about students who are achieving proficiency in
8 the English language arts and mathematics.
9 English language arts actually has four
10 areas. One is listening. I'm concerned that deaf
11 children, hard of hearing children, will have
12 trouble reading that.
13 I mean, there's no -- it's just
14 inconsistent, and it's a small group of kids, but
15 I just wanted to flag that.
16 MS. PODZIBA: Can you just let us know
17 where you are. Some of us can't find it.
18 MR. EVERS: Its B, big B on Page 2,
19 where it says "to the extent practicable,"
20 da-da-da, "and until students have achieved
21 English language proficiency." English language

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1 proficiency includes listening. I'm just telling
2 you that deaf and hard of hearing children are
3 going to have trouble with that content area.
4 I don't know what you do about it, but
5 I'm just telling you. That's a fact.
6 MS. PODZIBA: Ok, are you proposing --
7 MR. EVERS: I have no proposal.
8 MS. PODZIBA: Ok.
9 MR. EVERS: But it's those children who
10 will have trouble in proficiency in listening.
11 MS. PODZIBA: Regina?
12 MR. EVERS: I have others.
13 MS. PODZIBA: Ok. She's going to
14 respond to that.
15 MS. GOINGS: Just another comment to
16 that. As an accommodation during testing for deaf
17 and hard of hearing children, are interpreters
18 available to assist in that area?
19 MR. EVERS: I'm just saying that it's
20 going to be difficult for them.
21 Well, my question is, and Kay brought

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1 it up about determining whether states are
2 actually doing something here. So I've given that
3 kind of a mantra, which I understand, and maybe we
4 talked about it before, and if not I'm sorry for
5 bringing it up: What does the word "consider"
6 mean, especially when we're talking about the
7 federal government determining whether Wisconsin
8 is doing what they need to do?
9 So, can we talk about that a little
10 bit? I don't know whether anyone has the answer,
11 but I'd like to hear about it.
12 MS. PODZIBA: Kay, I think that's a
13 question for you. What is "consider"? How do
14 states know they consider?
15 MS. RIGLING: I was under the
16 impression that this was something the state would
17 include in their state plan for how they
18 considered it, so that there would actually need
19 to be some discussion of what they took into
20 consideration.
21 MR. EVERS: So maybe "describe" might

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1 be a better word?

2 MR. ROONEY: "Describe how it

3 considered"? Would that --

4 MR. EVERS: I kind of like describe,

5 period.

6 MS. RIGLING: I mean I think, to the

7 earlier point, these were meant to be criteria for

8 a state to take into consideration to inform its

9 judgment about what languages it needs native

10 language assessments for, and the -- how it made

11 its, I think the language is "best effort" to

12 develop native language assessments in those

13 languages.

14 So that's really what these were about,

15 I guess to prod the state's thinking. And if

16 there is a description, it would be a description

17 of you know, what they looked at when they made

18 the determination that they didn't need any native

19 language, or they needed native languages in

20 Spanish and Russian, or Eubic.

21 I think it really was meant to be

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1 "consider," but it would be a consideration that
2 would be part of the larger decision as to whether
3 native language assessments were needed and why
4 not and the efforts that the state had made in
5 order to develop them when the state determined
6 that they were needed.
7 MS. PODZIBA: Tony, does that make you
8 any more comfortable?
9 MR. EVERS: I think I would prefer a
10 response that's consistent with most of the others
11 sections.
12 MR. ROONEY: Tony, could I ask, I think
13 just changing "consider" to "describe"? Does that
14 work? "Describe languages that are spoken" --
15 In other words, they're describing the
16 languages. They're not describing how they're
17 considering.
18 MR. EVERS: "Describing how." There
19 needs to be something after it. I'm sure there
20 needs to be another word.
21 MS. RIGLING: I think there's already

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1 a requirement in romanette 2D to indicate,
2 "languages other than English that are present to
3 a significant extent for which yearly student
4 academics assessments are not available and are
5 needed".
6 So it seems like that's where the
7 description comes in, and then describe how the
8 state will make every effort to develop the
9 assessments that are needed.
10 So, this is really sort of to help the
11 state in thinking through the description that it
12 would make --
13 MR. ROONEY: This is the definition for
14 how they're defining languages "present to a
15 significant extent".
16 MS. RIGLING: Right.
17 MR. EVERS: And D, for what you just
18 said, could really replace everything in four.
19 So I'm not sure how this -- the extent
20 of the description that were the inclusion of
21 four, A, B, C, D, helps to describe what's

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1 actually required in the law.

2 MR. ROONEY: I think the distinction in

3 D is that in D the state has to identify the

4 languages that are present, but it doesn't tell

5 you how you have to define languages that are

6 present to a significant extent.

7 And it's not 'till Roman numeral IV

8 after that that we then say, the state has the

9 discretion to define that term and you have to

10 include these four criteria.

11 MR. EVERS: I just caution people about

12 overregulating here. English learning proficiency

13 is now included in the accountability system, so

14 it's not as if there isn't already a good plan to

15 increase proficiency.

16 MS. PODZIBA: Thomas?

17 MR. AHART: I'm kind of coming back to

18 some of these same terms that we're finding

19 problematic, "consider," being one of those terms.

20 And what I keep coming back to is, if I trace

21 through on Page 2 and 3 the non-red print, I can't

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1 tell if that' blue or black, that seems pretty
2 clear, and it seems like most of the red that
3 includes a lot of that language kind of smells
4 like guidance to me.
5 Then it becomes much easier to stomach
6 a term like "consider," or that kind of language,
7 but it's actually not in code, and you don't feel
8 this, Don't get me if I didn't talk about this at
9 enough meetings, or, you know, whatever the case
10 may be. And I think that the general consensus is
11 it seems that nobody knows how you proved that is
12 also more evidence that perhaps it's better
13 included in Guidance than an actual code or actual
14 regs.
15 MS. PODZIBA: Alvin?
16 MR. WILBANKS: He said it. I was going
17 to suggest that we put it in Guidance or leave it
18 in the regulations.
19 MS. PODZIBA: Audrey.
20 MS. JACKSON: I have two clarifying
21 questions. One is what is the interim in which

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1 this is being done? Is this a yearly basis?
2 This is not my area of expertise. Is
3 it being submitted once, or every year, the state
4 plan? Is that yearly?
5 MS. RIGLING: It is not yearly.
6 MS. JACKSON: No? What is the
7 interval?
8 MR. ROONEY: States have to submit
9 their plan at the beginning of the law taking
10 effect. So at some point in the not-too-distant
11 future states have to submit the plan for how
12 they're going to comply with all the requirements
13 in the new statute.
14 Then states may update their plan
15 annually or the Department may ask them at some
16 interval period of time, and it may be determined
17 based on different pieces of the statute
18 requirements. But all states will have to submit
19 a plan in order to receive federal funds at the
20 beginning of the implementation of the law.
21 MS. JACKSON: Ok. And again, it's not

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1 my area of expertise, but that reauthorizations
2 don't always seem to happen exactly as expected,
3 if there could be some consideration for if there
4 are large fluxes in population how states might
5 consider that.
6 I know from the time that I've left
7 Vermont where I grew up to when I go back now it's
8 a very different part, at least to me, a different
9 population. So things can flux, sometimes quickly
10 depending on global dynamics.
11 And second, and this is another
12 question, just about the assessments that we're
13 referring to, I believe since this is always in
14 200.6, it's clear that these are the annual
15 academic assessments for accountability? That's
16 like sufficiently just assumed for everything,
17 right?
18 So, then even if you're making these
19 requirements for all the languages, those are only
20 for academic accountability assessments, not
21 necessarily for other interim assessments.

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1 MR. ROONEY: Yes. So, to your point,
2 it is about the -- this section of 200.6 F is
3 about the academic assessments. There is another
4 part, which we'll talk about, Issue Paper Part B,
5 on the English language proficiency tests, that
6 also ends up being in 200.6.
7 But if you look at the very next line,
8 on Page 2, all of this comes under this header for
9 F where "a state must include English learners in
10 its academic assessments as follows." So all of
11 the text below is all around the reading language
12 arts, math, and science state assessment system.
13 MS. JACKSON: For me, I'm just a
14 teacher, and I'm sure there are lots of teachers
15 just relaxing and reading this, but the academic
16 assessments, that's within -- the assumption is
17 that those are for accountability? Right?
18 I mean, I know you're saying that
19 clearly, but is that clearly made out previously?
20 MR. ROONEY: Yes and no. Elsewhere in
21 the statute they lay out the assessments that are

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1 used in the accountability system. Why I'm
2 hedging is because the reading language arts and
3 math assessments are included in the
4 accountability system. Science is also an
5 academic assessment that states need to have once
6 in elementary, once in middle and high school.
7 That's not required to be part of the state's
8 accountability system. States can make it part of
9 their accountability system.
10 MS. RIGLING: What if we, in the very
11 first line in F, "must include English learners in
12 its academic assessments under Section 200.2"?
13 Because I think that's what we're talking about
14 here.
15 MS. PODZIBA: And you have it in
16 general. So do you need it in both places, Kay?
17 MS. RIGLING: No.
18 MS. PODZIBA: So if it's in there in
19 general -- is it there?
20 MS. RIGLING: We probably don't need
21 it. We probably don't need to add it, you're

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1 right.

2 MS. PODZIBA: Liz?

3 MS. KING: Yeah, I think you do need

4 it.

5 So, Audrey, if you look at 200.2,

6 there's a statutory reference. So 200.2B, "the

7 assessment required under this section must except

8 as provided" -- blah blah blah, blah, blah, "be

9 administered to all students".

10 So this is like -- there are two

11 different things happening in 200.2, right? One

12 is these assessments are those assessments

13 required under the statute, and then there is the

14 part to 200.2 that are about the process for

15 approval, like validity and reliability and peer

16 review.

17 So I just want to make sure that we're

18 covering both of them. We don't have to make that

19 decision now. But I understand -- so consistent

20 with 200.2, my interpretation, hope, intention,

21 and expectation is that that's a reference to the

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1 validity and reliability requirements, and that in
2 F, it is those assessments which are required by
3 the law for the accountability purposes.
4 To your point, you can do other things
5 in the accountability, but I think that those two
6 different 200.2 references are serving two
7 different purposes, so I don't know if you need an
8 additional letter under that, or how else to do
9 that. But that was just the point I wanted to
10 make.
11 MS. PODZIBA: Thank you.
12 Rita.
13 MS. AHRENS: I just want to make a
14 quick comment to really push back against this
15 idea that keeps cropping up that we may be
16 overregulating.
17 I think our job here is to really
18 clarify the statute, and what I'm hearing from
19 parents that I'm speaking to is that there is a
20 lot of confusion around definitions, especially
21 when it comes to English language learners, or

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1 students with disabilities who are English
2 language learners, as well. There needs to be
3 regulations that really clarifies these guidelines
4 the states. Because parents don't necessarily
5 know, you know, where to look for in Guidance.
6 It's much easier to look in regulations to see
7 what is legally required of the state. Because
8 Guidance is not binding.
9 So I think, from a parent perspective,
10 we want to clarify where we can definitions or
11 criteria that would make it helpful to see if, you
12 know, if parents need to advocate more strongly
13 with the state or the district for their students.
14 MS. PODZIBA: So I'm hearing proposals
15 to take it out. I'm hearing proposals to leave it
16 in. So I'm guessing that taking it out -- there's
17 not going to be consensus to put it in Guidance
18 either.
19 So I think where we are then is needing
20 to polish it up so that it becomes something that
21 everyone can live with.

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1 I am cognizant of the time, and it's
2 probably a good time for lunch. I just want to
3 ask a question.
4 Are there other issues on this issue
5 paper we have -- ok, so when we come back after
6 lunch, we'll continue with this issue paper. It's
7 a quarter of, so let's reconvene at 1:45, and
8 Patrick, before we break --
9 MR. ROONEY: Just one reminder. The
10 cafeteria, if you go that way down the building,
11 it's available. You can also leave the building
12 and there's food trucks and there's restaurants
13 outside the building.
14 There is a room for negotiators if you
15 would like to convene separately or just to get a
16 break and sit quietly and e-mail in the Training
17 Center in 1W112, which is if you go out both doors
18 and go straight back and through the glass doors
19 and around, you'll find it.
20 (Whereupon at 12:47 p.m. a luncheon
21 recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 (Whereupon at 1:48 p.m. the meeting

3 resumed.)

4 MS. PODZIBA: Please take your seats

5 and we'll reconvene.

6 Alright, I think most of us are here,

7 and we will pick up where we left off.

8 So, again, just a reminder. There is a

9 public comment sign-in sheet. If anybody intends

10 to address the Committee at the end of the day,

11 please sign up. The public comment sign-in sheet

12 is on a table right near at the far exit door.

13 So as we left, there was a proposal on

14 the table that I wanted to see if people were ok

15 with the proposal. It was Tony's proposal to

16 change "consider" to "describe how" in B and C.

17 Are there any concerns about making

18 that change?

19 So, in B and C, "consider" would change

20 to "describe how".

21 Is everyone ok with that?

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1 Yes, Richard?

2 MR. POHLMAN: Describe how what? I

3 think that it's missing a word, if you just simply

4 use "describe how". I think "describe how it

5 considers," I don't know. But reading it,

6 "Describe how languages other than English that

7 are spoken by districts, populations of English

8 learners, including English learners who are

9 migratory, English learners who were not born in

10 the United States and English learners who aren't

11 Native Americans" --

12 MR. EVERS: There's no verb.

13 MR. POHLMAN: Of all the points, I

14 missed the verb.

15 MS. PODZIBA: Tony, did you want to

16 revise that proposal?

17 MS. RIGLING: Would it help to first

18 go back to the lead-in language to see what these

19 verbs are modifying? I'm looking at romanette iv,

20 "in determining," that language.

21 MS. PODZIBA: Ok, can you take us

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1 through that?

2 MS. RIGLING: Well, it says "In

3 determining which languages other than English are

4 present to a significant extent in a state's

5 participating student population, a state must, at

6 minimum"... and then we list the four things...

7 "Ensure that its definition of the languages that

8 are present to a significant extent encompasses at

9 least the most populace language".

10 And then what we had proposed was,

11 "Consider languages that are spoken by distinct

12 populations," and we list some, who aren't

13 probably the most populace language, but are other

14 significant populations of non English speakers.

15 And then C was, "Consider languages

16 other than English that are spoken by a

17 significant portion of," maybe in one or more of

18 the LEAs.

19 So, again, trying to get at

20 concentrations of non-English languages that again

21 maybe don't rise to the level of the most populace

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1 language in the state.

2 And those were all meant to be sort of

3 triggers for what a state might go through in

4 determining the languages that are present in

5 those states, to a significant extent.

6 It's sort of like, kind of criteria

7 considerations for what you might think about for

8 what does a "significant extent" mean in the

9 context of your state.

10 And trying to also get states to think

11 about more than just Spanish, more than just the

12 primary language or the language that's most

13 populace in the state.

14 MS. PODZIBA: And so, Kay, does the

15 "describe how" -- how do you process "describe

16 how" versus "consider"?

17 Because if I hear you correctly,

18 there's not a language problem, because the verb

19 is actually above.

20 MS. RIGLING: But I think the

21 "describe how" doesn't fit with the rest of the

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1 language in that paragraph.

2 I think, to Richard's point, we need to

3 say describe how the languages do what.

4 MS. PODZIBA: And your sense is that

5 "consider" doesn't create that problem?

6 MS. RIGLING: Right. Because I

7 think -- because the "consider" goes with "A state

8 must consider in determining which languages other

9 than English are present to a significant extent".

10 MS. PODZIBA: Ok.

11 MS. RIGLING: And then above they have

12 to describe sort of --

13 MS. PODZIBA: Ok, I don't want to spend

14 a whole lot of time on "describe how" or

15 "consider," so if it's problematic...

16 Tony?

17 MR. EVERS: I'll surrender. I'll

18 surrender in the context of, I believe all the new

19 language is a problem as it relates to

20 Congressional intent and overregulation.

21 So it's not that I'm agreeing with

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1 "consider". I just don't think it's a time --
2 it's worth the time to mess with it.
3 MS. PODZIBA: Ok. Aaron?
4 MR. PAYMENT: So I would just say that
5 we probably wouldn't have spent as much time if we
6 would have read it contextually, because I think
7 we were reading it out of content.
8 So I also agree that "consider" is
9 proper. I think it shouldn't be alarming for
10 states, because "consider" is not a specific thing
11 that they have to do. And we would like them to
12 consider it. And I think it will be then left to
13 the politics and the local whatever to figure out
14 what consider means, and that's a good thing.
15 That's local.
16 MS. PODZIBA: Ok. I'd like to
17 entertain new issues on Issue 5A. Are there new
18 issues?
19 Ron?
20 MR. HAGER: I'm sorry, this actually
21 came up just before lunch. We're going backwards

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1 here, but it did come up just before lunch, so I
2 wanted to come back to it.
3 It's on Page 2. It's in the blue
4 (f)(1), romanette (1), capital B, and you have it
5 in blue. It's in the Academic Content area. I
6 didn't know where that language came from,
7 because, you know, typically it's aligned with the
8 states. It's just a different phrase than we see
9 elsewhere in the ESSA. It's just a little bit
10 different phrasing than we've been using.
11 So it's on Page 2, in that capital B,
12 that blue, "Determine the student's mastery of
13 skills and academic content areas," where
14 typically it's more like "that are aligned with
15 the state's challenging academic standards," which
16 I think is the language you use, like for example
17 in 200.2, that the assessments are to be aligned
18 with the challenging academic content standards.
19 So I don't know if there was a reason
20 why you had that different phrase there.
21 MR. ROONEY: So this is from the

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1 statute. If you look at the tab Relevant Statute,
2 if you look on Page 25, and at the bottom of that
3 page there is Roman numeral III. I'll let people
4 get to that part.
5 Sorry, it's under the tab Relevant
6 Statute, with the assessments, the second page on
7 that Page 25, Roman numeral III at the bottom
8 says, "The inclusion of English learners who shall
9 be assessed in a valid and reliable manner and
10 provided appropriate accommodations on assessments
11 administered to such students."
12 Next paragraph, "Including to the
13 extent practicable assessments in a language and
14 form most likely to yield accurate data on the
15 what the students know and can do in academic
16 content areas, until such students have achieved
17 English language proficiency".
18 MR. HAGER: Ok.
19 MS. PODZIBA: Leslie?
20 MS. HARPER: New issue.
21 MS. PODZIBA: Yes. Is your mic on?

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1 MS. HARPER: Yes, it is.

2 Looking at Page 20 of the red-line

3 version, it's the top of the page, Line 16. So,

4 that's in paragraph two, assessing reading

5 language arts and English. Line 16 gives the

6 Puerto Rico exclusion and I would like to insert

7 in there as well, "excluding Native American

8 language medium schools in Puerto Rico for three

9 or more consecutive years," da-da-da-da-da. So

10 talking about assessing reading and language arts

11 and English.

12 MS. PODZIBA: "Native American language

13 medium schools". Is that correct?

14 MS. AHRENS: Or students in -- yeah,

15 Native American language medium schools, "and."

16 MR. PAYMENT: Yeah, "and" because

17 otherwise it's really limited.

18 MS. RIGLING: Definitely not in Puerto

19 Rico.

20 MR. PAYMENT: Native language students

21 that live in Puerto Rico?

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1 MR. CHAU: Actually, this gets to the
2 question that I asked earlier about schools that
3 teach in a language other than English.
4 MS. HARPER: Well, I will justify this,
5 because again if we go back to NALA, and go back
6 to Title III, Section 31.27, describes
7 specifically Native American languages and Puerto
8 Rico, and those are the only two that are
9 described in the statute in this language. Native
10 American languages and Puerto Rico are described
11 in Section 31.27.
12 MS. PODZIBA: Patrick --
13 MS. HARPER: So, we would like to be
14 afforded the same rights and the same
15 considerations as Puerto Rico. It would make
16 sense to align that piece with this. It doesn't
17 make sense to only allow the exclusions for Puerto
18 Rico and not for Native American language
19 students. It's very specific in there.
20 I can pull it up and put it up there if
21 you need to.

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1 MS. RIGLING: Can we just provide a
2 base. Again, this whole section, this whole
3 section of regs applies to state assessment
4 systems, and the reason it does is because it's a
5 requirement if a state wants to receive funds
6 under Title I. If it doesn't want Title I funds,
7 there's absolutely no requirement.
8 Title I funds go to states, the
9 District of Columbia, and Puerto Rico. So
10 Congress has specifically written in this
11 exception for Puerto Rico because they instruct in
12 a language other than English.
13 So what Puerto Rico has to do with
14 respect to meeting the assessment requirements in
15 Title I is to develop an assessment system in
16 Spanish that meets the requirements of the law,
17 essentially what are in 200.2, that we're
18 deliberating on.
19 So that assessment system has to come
20 to the Department through peer review and meet all
21 of the technical quality, validity, reliability

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1 requirements that a state's assessment system in
2 English must meet.
3 So it's not that they're excluded from
4 assessments. They're excluded from the
5 assessments in English. And instead they're being
6 assessed through a valid and reliable assessment
7 that has gone through peer review.
8 I honestly can't say that we have the
9 authority to make this addition because it's -- it
10 would be -- it would have to be in the context of
11 either the state's assessment system or the Bureau
12 of Indiana Education's assessment system, which
13 BIE also receives funds under Title I and needs to
14 meet the requirements of Title I. With respect to
15 assessments, BIE does that through requiring BIE
16 schools to use the assessments of the state in
17 which they're located.
18 That's an assessment BIE made through
19 regulations. It's probably going to reconsider
20 that decision under ESSA, but BIE has that
21 prerogative to do that.

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1 So, in this context, if we could make
2 this change, it would be within -- it would have
3 to come in through a state's assessment system, be
4 peer reviewed, and the assessments for the
5 language medium schools would need to first be
6 acceptable by the state and second would need to
7 pass peer review. They would have to be measuring
8 the content, the state's content standards and be
9 comparable to the state's achievement standards.
10 So I just want to frame that context
11 for the discussion.
12 MS. HARPER: Thank you, Kay. That's
13 exactly what we're talking about in this section
14 here. And I guess the question then becomes under
15 what authority is Puerto Rico given that
16 exception?
17 You have described that it is in the
18 state's accountability system. That's the same
19 thing we're talking about for native language
20 medium schools that exist.
21 Puerto Rico was given the same right as

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1 a state throughout this whole education law. It's
2 not any special right because it's a territory.
3 They've proven that. They are written in as a
4 state.
5 And in Section 31.27, "Programs for
6 Native Americans or Puerto Rico, notwithstanding
7 any other provision of this part, programs
8 authorized under this part that serve Native
9 American children and children in the Commonwealth
10 of Puerto Rico may include programs of
11 instruction, teacher training, curriculum
12 development, evaluation assessment designed for
13 Native American children learning and studying
14 Native American languages and children of limited
15 Spanish proficiency, except that the outcome is
16 increased English proficiency," right? Right.
17 I mean, we're talking about that, but
18 there's this whole thing. If you look at Puerto
19 Rico's assessment workbook, they've got the whole
20 thing worked out, and it's complex, and it boggles
21 the mind of all of these votes. But they have

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1 limited Spanish proficiency in Puerto Rico.

2 Now this is the same authorization and

3 this is the same recognition given to students

4 studying Native American languages.

5 So what we're asking for, what we're

6 suggesting is equal consideration as Puerto Rico

7 for our students in native language medium

8 programs. Now remember that definition of native

9 language medium schools is students who are

10 attending a school in which academic content is

11 presented in the medium of a native American

12 language for fifty percent or more of the data.

13 Again, it makes sense to track down the

14 proof and to do the assessments in the language of

15 instruction. We're not trying to get out of any

16 assessments. Our schools, our tribes, our Alaska

17 native communities, our Hawaii native communities,

18 again are all very good educators. We are

19 describing programs of instruction that

20 necessarily include assessment progress,

21 assessment schedules, assessment design.

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1 We very well have tribal priorities
2 that are prioritizing valid and reliable
3 assessment schedules and talking about how we meet
4 these schedules of bilingualism and
5 English-language proficiency down the road. But
6 also this is our right to educate our students in
7 our language of instruction.
8 And I'm not just talking about the IDEA
9 schools either. That's a tiny, tiny little
10 percentage of our students.
11 MR. PAYMENT: Eight percent.
12 MS. HARPER: Eight percent of our
13 students attend IDEA schools. The rest of our
14 kids are in public schools and working with our
15 states and working with our tribal education
16 department to put these plans together.
17 So, what we're asking about is, you
18 know, including that in here. It comes from the
19 same base of legislation and it doesn't make sense
20 to exclude native language medium schools if that
21 right is granted to Puerto Rico.

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1 MS. RIGLING: And again, I think the
2 reason it's granted to Puerto Rico is because
3 Puerto Rico is a grantee of the Department under
4 Title I. We give them Title I funds in exchange
5 for their commitment to meet all of the Title I
6 requirements.
7 Congress wrote in this exception
8 because their native -- their language of
9 instruction is obviously Spanish and not English.
10 With respect to Native American
11 language medium schools, it's my understanding
12 that the language that you're referring to in
13 31.27 is -- it's definitely actually, absolutely
14 as you described, but it's with respect to a
15 discretionary grant program that is funded under
16 Title III.
17 So, it certainly I think does give
18 credence to the fact that Congress, at least in
19 that program, recognized that there were Native
20 American language programs and Spanish language
21 programs in Puerto Rico, and coupled them

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1 together.

2 The situation we have to deal with,

3 though, is the fact that under Title I, it's the

4 states and Puerto Rico and the District of

5 Columbia that receive Title I money. So the

6 states are the ones that have to comply.

7 And so what we need to be I think

8 cognizant of is what requirements we're putting on

9 the state with respect to assessing native

10 language medium schools in their language of

11 instruction and whether that is part of the

12 requirement of the state to essentially use the

13 same assessments to assess all students.

14 MS. HARPER: In Puerto Rico, however,

15 there are two official languages of the state, but

16 they don't provide it in English. They only

17 provide it in Spanish.

18 So, you know, if we're talking about

19 state's rights and state's responsibilities for

20 assessing students, you know, ultimately they

21 would have an opportunity to be assessing their

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1 students in English, but they're not.

2 Their work is solely on Spanish and

3 limited Spanish proficiency needs and Spanish

4 interventions, and it leads over into the other

5 section, you know, that we talk about with the

6 language proficiency assessments.

7 So, it's weak, you know. It's thin

8 ice, like the ice on the lakes at home in

9 Minnesota right now, you know, moving into spring.

10 It's a thin line there, and we just request for

11 that same right for our native language medium

12 students.

13 If Puerto Rico is given this right and

14 this exception, that is something that makes a lot

15 of sense to me.

16 And again I recognize in the Native

17 American Languages Act, nothing should be

18 construed to limit the use of native languages, in

19 the rules of construction. Nothing in the civil

20 rights section should not, you know -- what's the

21 word? I can't find my words.

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1 Yeah, with the civil rights tribes to
2 be instructing through their native languages, you
3 know.
4 MS. RIGLING: Maybe what we can do to
5 move on is have Judy bubble that and put in the
6 margin that, you know, we need to consider I think
7 legally whether we can add this.
8 And then what we'd have to do, if we
9 can, is to decide how we would do it, because
10 again, it would have to be the state that would be
11 doing these assessments, and they would have to be
12 peer reviewed and meet all the requirements of the
13 statute.
14 MS. PODZIBA: So does that mean, Kay,
15 you'll look into the legal questions about that?
16 MS. RIGLING: We will look into that,
17 yes.
18 MS. PODZIBA: On this issue, Aaron?
19 MR. PAYMENT: So, alright, I'm just
20 going to address the concept. So what we're
21 talking about is really the same thing as Puerto

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1 Rico. And it can't make sense for Puerto Rico and
2 not make sense for the indigenous people of this
3 nation.
4 And so, you know, the practice of
5 assimilation was -- I mean, the Bureau of Indian
6 Education, which back then was the Department of
7 War, their motto was -- the first superintendent
8 of Indian education, his motto was, "Kill the
9 Indian, save the child."
10 The federal government had a very
11 active role in assimilation and stripping our
12 language and culture from us. There isn't anybody
13 else in this country that can say that.
14 So there are the provisions that exist
15 in Esther Martinez, the Native American Languages
16 Act that are specific to providing an environment
17 where we can do emersion schools, and and then we
18 do the instruction in our language.
19 So to say then that we provide an
20 exception for Puerto Rico, when the articulation
21 of how they would do the assessment can't be done,

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1 and then we test them in English -- or don't test
2 them in English, but that same standard can apply
3 to the indigenous people who are trying to revive
4 their language in our school systems, that that
5 same provision can't apply to them.
6 First of all, if that needs to be
7 corrected, we will get legislation to do that.
8 Second of all, I think it is in the language. I
9 do believe it's provided in there.
10 And I just wanted one final comment.
11 The BIE serves eight percent of the
12 population. We are often in the Department of
13 Education. That's why we pushed for and we have a
14 consultation policy for the Department of
15 Education. We are the invisible minority, and
16 ninety-two percent of our people, we have the
17 worse graduation rate of any racial ethnic
18 population. There isn't anything specific or
19 targeted to change that or improve that. There's
20 a White House initiative right now.
21 So when we talk about how do we make

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1 the substantive change, reviving our culture and
2 undoing what the federal government did is the way
3 to get to that.
4 So, for saying why is there a carveout
5 for Puerto Ricans, and then we ask, why is there a
6 carveout for American Indians, it is the same
7 principal, the exact same principal.
8 And we agree with the stringent attempt
9 of the states to do the assessments, but the
10 reality of that situation is you've got three
11 hundred languages. Are state's going to be able
12 to -- in Michigan alone we have Chippewa, Ottawa
13 and Potowatomi, so they would have to do the
14 articulation for those three.
15 There are other Indian people that live
16 in Michigan. There are some states that have a
17 multitude of languages, so it might not even be
18 feasible for that to happen.
19 I think they should try to do that. We
20 welcome them to do it. But in the circumstance
21 that they can't figure it out, then there should

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1 be an exception. So we shouldn't be treated any
2 less than a foreign territory, you know, the
3 indigenous people being put behind a foreign
4 territory.
5 MS. RIGLING: Let me make one final
6 comment. This isn't an exception, though, for not
7 testing?
8 MR. PAYMENT: We understand that.
9 MS. HARPER: No, it's not.
10 MS. RIGLING: Ok. But I thought your
11 point was it would be hard for Michigan, for
12 example, to do assessments in even the three
13 languages, let alone the other indigenous people
14 in Michigan.
15 MR. PAYMENT: So my reference to that
16 is that, to the circumstance where they can't do
17 that, then we would do our own assessment.
18 We're not saying we want to be except
19 from doing an assessment. We're saying we want to
20 be exempt from doing an appropriate -- you used
21 the term earlier "appropriate assessment". We

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1 want to be exempt from being assessed
2 inappropriately.
3 There's things, lots of things that are
4 lost in the translation between -- although we
5 have the same base language, between our language
6 and English. There's huge differences.
7 So, if you are teaching Indian children
8 in their native language, whether it's the Native
9 American Languages Act, Esther Martinez, which the
10 federal government, Congress, legislative intent
11 is to do that, and then you try to assess them in
12 a foreign language, then you're going to have
13 problems. They're going to fail those
14 assessments.
15 So, we're all about, and we're very
16 good at bureaucracy and following federal
17 guidelines. We're extremely good at that, because
18 our funding is contingent on it. So we've learned
19 to do that very, very well.
20 And we also are very conservative when
21 it comes to our own education systems and making

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1 sure that our kids can perform. And they're
2 usually in academies of excellence. We don't have
3 language emersion at my school, but our MEA
4 scores, Michigan Education Assessment, we have
5 double digits higher than the public schools. So
6 when we do language and culture as part of the
7 curriculum, we excel.
8 And so these -- their school is doing
9 even more. They're doing a full scope of having
10 them understand who they are as people through
11 their language that cannot be translated into an
12 instrument that then assesses their ability.
13 MS. PODZIBA: Rita, do you have a
14 comment on this?
15 MS. AHRENS: I just wanted to clarify,
16 is native Hawaiian considered a Native American
17 language? Because I didn't know whether it needed
18 to be explicit, as you're considering this, or
19 native Hawaiians would be drawn out.
20 MS. HARPER: The term "Native American
21 language" is specifically in here and recognizes

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1 Alaska native and native Hawaiian languages. It
2 encompasses those.
3 And this is definitely not -- very
4 specifically Puerto Rico has systems of assessment
5 in place. This is not an assessment dodge. 6
7 They have an exception in one line, and
8 in this right here, and they have workbooks and
9 assessments.
10 MS. PODZIBA: Leslie, if we can give
11 Kay a chance to go back and look at how the acts
12 intersect with each other and then come back to
13 this, I think that would be the way to go on this,
14 if that's ok.
15 MS. AHRENS: Sure.
16 MS. PODZIBA: Additional issues on 4A.
17 Kerri?
18 MS. BRIGGS: There's language under F,
19 I don't know if it's capital or A, it's red, on
20 Page 2, about "afford any benefit from such
21 participation." And it's in a couple different

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1 places in the issue papers, and I just didn't know
2 what that meant. What does it mean?
3 MR. ROONEY: So it is in a couple
4 different places and I alluded to it I think when
5 I did the instruction.
6 MS. BRIGGS: No, you blew right past
7 it.
8 MR. ROONEY: The intent with our
9 proposed regulation, with the proposed language
10 here is making sure that, if a student gets an
11 accommodated form of the state's test, that that
12 doesn't preclude them from the benefit that's
13 afforded to other students who get a
14 non-accommodated form of the test.
15 MS. BRIGGS: For example, what's a
16 benefit? I'm just having a hard time visualizing
17 this.
18 MR. ROONEY: I think this might come
19 up, and it's also in Issue Paper 4A where we
20 talked about assessment for students with
21 disabilities, and also in Issue Paper 3, where we

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1 talked about the locally selected
2 nationally-recognized.
3 So, an example would be, if there was a
4 nationally-recognized test that provided
5 accommodations that didn't result in a cog
6 reportable score, that those students who are
7 taking a form of the test that can be used for
8 state accountability, but can't be used for the
9 same purpose and used for other kids who take the
10 test that don't use that accommodation, that that
11 would be a concern.
12 I think the reason we're flagging this
13 is we think that would be a concern under Title VI
14 of the Civil Rights Act that clarified equal
15 benefit to all students for the educational
16 service.
17 MS. PODZIBA: Kerri, does that answer
18 your question?
19 MS. BRIGGS: Yes.
20 MS. PODZIBA: Richard?
21 MR. POHLMAN: Do you envision that being

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1 further clarified in Guidance, to get -- I had it
2 underlined in several places, too. I thought I
3 knew what you meant, and I imagine most people
4 might also have ideas, but it's a less than -- I
5 think what you're getting into. This is again a
6 place where I think you could go into Guidance of
7 what states can do. I don't think it if needs
8 more clarification in the regulation.
9 MS. PODZIBA: Are there other new
10 issues on 4A -- sorry, 5A? I just wanted to see
11 if you were asleep.
12 MR. HAGER: This is a wakeup call.
13 MS. PODZIBA: Any other items on 5A.
14 MS. RICKER: I have a question.
15 MS. PODZIBA: Mary Cathryn.
16 MS. RICKER: On Page 5, almost to the
17 end, last four lines, the word "attended" is
18 struck out and "enrolled" is inserted, and so just
19 curious if it was just a more modern word that's
20 been used throughout, or if there are implications
21 to "attended" versus "enrolled".

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1 So I want clarification. Thank you,
2 MR. ROONEY: Our current regulations
3 used the word "attended," and the statute, the
4 ESSA, when it passed and included this language,
5 they changed it to "has been enrolled in school
6 in the United States". I think functionally we
7 think those two terms are more or less
8 interchangeable. I think as an operational
9 definition they would probably be considered the
10 same, but we wanted to use the language that was
11 in the statute.
12 MS. RICKER: Thank you.
13 MS. PODZIBA: Sure.
14 So to summarize, I think, if my notes
15 are correct, and please correct me if I'm wrong,
16 the outstanding issues are essentially essentially
17 Paragraph 4. Is A, B, and C acceptable as it?
18 Is it just paragraph D?
19 I know there were proposals about
20 Guidance, but I know those didn't get any
21 traction. So, is the item there essentially

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1 Paragraph 4D that's outstanding? And then the
2 other item is with regard to Native American
3 language medium schools. Those are the two
4 outstanding items in 5A.
5 Is that correct?
6 So people have been asking what
7 happened. So essentially what we're doing is
8 we're going through the text, making the changes
9 that people are comfortable with and identifying
10 the difficult issues essentially.
11 Once we go through all of the red text,
12 we will come back to those items. And what
13 happens when they're isolated, it's easier to get
14 a lot of focus on them. So that's what we'll
15 be -- and the focus in the sense of, how do we
16 reach consensus? How do we develop proposals that
17 everybody can live with, given that everyone has
18 heard the concerns and constraints that have been
19 raised.
20 Tony?
21 MR. EVERS: Yeah, I understand that you

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1 need to focus on individual items, but I still
2 kind of reserve the right to be concerned about
3 the entire overregulation. So that's an issue for
4 me.
5 MS. PODZIBA: Ok, and so is that on a
6 specific section or is that in total?
7 MR. EVERS: Well, I tried in several
8 ways to make it more palatable, but, you know, the
9 fact of the matter is, this is I think --
10 Congressional attempt is not necessarily being
11 followed here.
12 So I just need to wrap my head around
13 that, frankly. So I am a not prepared to say, if
14 you change this word or that word -- that's why I
15 backed off on the "consider" thing, because it's
16 much more than just "consider".
17 MS. PODZIBA: Ok, so I'm not asking for
18 tentative agreements at this point.
19 MR. EVERS: I know. Yeah, I was just
20 making the point that as we look at things in more
21 finite terms, we can't lose track of the concerns

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1 some people might have of the entire issue.
2 MS. PODZIBA: Ok, so I guess we're
3 going to have to think about how we're going to
4 manage that from a process point of view.
5 What I don't want to have happen is we
6 kind of scrub everything and it's kind of ok, and
7 then there is a concern raised about, Well,
8 overall there's too much here.
9 So, I don't know if I need you to flag
10 specific points that you can't live with.
11 MR. EVERS: I could make all sorts of
12 proposals that I'm confident we will spend a
13 couple of hours on and at the end of the day they
14 won't be accepted.
15 So I just think I'm flagging the fact
16 that dealing with the finite issues may not
17 resolve some of the concerns I have and I think
18 others have relative to the overregulation of
19 this.
20 MS. PODZIBA: So I just need help here.
21 So what should we do?

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1 I think our goal, if I understand the
2 goal of the group, is good faith negotiations to
3 reach consensus, right? I can't bring that. It's
4 got to be what all of you are here to do.
5 So my question then becomes, how do we
6 operate if it's not clear that the language that
7 we're looking at may ultimately not be acceptable?
8 I mean, I think we need to work through
9 the packages to get them acceptable. So I don't
10 know how else to do that but to walk through them
11 and figure out what isn't acceptable as it appears
12 on the page.
13 Aaron.
14 MR. PAYMENT: So I have a suggestion.
15 I share some of those concerns because I do think
16 that, while I'm an advocate, I also want to make
17 sure that what we come up with is not something
18 that's going going to veto or sabotage or -- and I
19 know those around the terms of we use around
20 consensus.
21 So I think what we should do, process

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1 wise, is continue as we're doing it, and you note
2 your concerns as we do it, but then when we're
3 done, I do think it deserves to have a review back
4 through a lens of, Is this appropriate? Is it
5 overregulation? Is it not enough regulation?
6 And so, we give it that treatment, but
7 that way we can get through the substance of the
8 individual arguments and issues, and then we can
9 come back with basically that lens of, Have we
10 gone too far? Have we not gone far enough?
11 And then invariably what's going to
12 happen, is that in order for us to be done, in
13 other words, I don't know if we have to stay in
14 the room until we're done, or keep coming back to
15 DC until we're done, we have to find a way to get
16 to the final product.
17 I think enough of us -- I think we all
18 have the same ultimate motivation, or we wouldn't
19 have accepted this duty.
20 But I think that's the way to do it is
21 to process through everything and then come back

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1 with the lens and the review of, Is this too far
2 reaching? Is it not far enough? And that will be
3 in and of itself a negotiation to a reg.
4 MS. PODZIBA: Janel.
5 MS. GEORGE: Yeah, I wanted to say, to
6 Tony's point, I certainly understand some of the
7 concern going through this, walking through this
8 piecemeal, each issue.
9 For me the overarching issue about
10 Title I is about equity and it's about serving
11 some of our nation's most vulnerable students, and
12 I don't think there's disagreement around the
13 table at all about that, about the intent of Title
14 I or about the goal of it.
15 I think unfortunately part of the
16 process here is laboring through these provisions.
17 I would rather not have had such a long
18 conversation about eighth-grade optional
19 exceptions to the assessment.
20 You know, I have my concerns. I have
21 larger concerns about how we drive equity, but

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1 it's an important component of equity, and I think
2 walking through this process is how we arrive at
3 that goal of really granting equity for all
4 children.
5 And I think that if we're in a place
6 where that might not happen through this process
7 and we do have to be honest and transparent with
8 ourselves about that, and about whether this is a
9 worthy exercise -- I do think it is, and I'm not
10 trying to sway you one way or another -- but I
11 just think that the process is what it is and we
12 do have to walk through it piecemeal. And again,
13 if we keep that goal in mind about what the
14 purpose and intent of this law is, what children
15 are actually being impacted most by this law.
16 And I have to be honest. The children
17 that are impacted look a lot more like me than
18 some other people around this table. And maybe I
19 have more of a personal stake in this and a
20 personal stake in making sure that we advance the
21 goals of this process. This is part of our

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1 legislative process, the administrative process.

2 So I just want to add that again, I do

3 think it's a worthy exercise. I have other --

4 like all of us, have other work to do as well to

5 advance equity, but I do think that's the purpose

6 of it, however taxing it can be at times.

7 MS. PODZIBA: Tony?

8 MR. EVERS: There is no question that

9 the equity issues impacts people of color more

10 than they impact me. But as a professional and

11 the state superintendent, it is the top priority

12 and it always has been. That's why it caused

13 CCSSO to make it a top priority in their work

14 going forward.

15 It's just that I continue to have to

16 balance that with what is overreached, what is

17 making law when Congressional intent isn't that.

18 And that's my balance. So I just

19 wanted to flag the fact that that continues to be

20 the balance I set up front. If I had a magic

21 wand, every penny that they have on innovation and

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1 testing would be used to create tests for your
2 kids in your native schools where the kids learn
3 through their native language, and because of
4 their interaction with the culture they're
5 achieving at a higher level. I get all that.
6 But the fact of the matter is we're a
7 committee here, and one of the things we have to
8 think about is whether or not these things
9 overreach and are out of the realm of
10 Congressional intent.
11 So that said, I mean, I could tell you
12 if I had -- if I was going to make a poll, that
13 I'd eliminate some of this. I know that's not
14 worth the discussion.
15 So I'm telling you right now that I
16 want to flag this to have that discussion at any
17 point in time.
18 MS. PODZIBA: Thank you. With that,
19 and I appreciate that.
20 Audrey?
21 MS. JACKSON: I'd just be curious to

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1 learn more, Tony, about how you're interpreting
2 Congressional intent, because that's not my area
3 of expertise, but also -- and you don't have to go
4 in depth on it now, unless you'd like to. But I
5 also just want to clarify, wasn't part of
6 Congressional intent also to have this committee
7 exist and to address the issues listed for us?
8 Because we're not addressing all of the
9 issues put forth in ESSA. But these were the ones
10 for why we're here.
11 And I'm not saying that we can go
12 crazy. There are things that I would like to add
13 or move or whatever. But to say that we can't do
14 anything or make any interpretation I feel like
15 would make the meeting invalid.
16 MR. EVERS: Well, it's a judgment call,
17 but I'll give you a small example, and Leslie's
18 example is a perfect example.
19 One could say that the reason they were
20 considered in the same vein as Puerto Rico is
21 because Congress, A, didn't think about it, or B

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1 decided not to do it. If they wanted to include
2 the schools that Leslie's honoring and working so
3 hard to make successful, that would be part of the
4 law. And it's not part of the law. So it seems
5 outside of the intent of Congress that that be
6 inserted in the law by us.
7 Would I love to do that? Absolutely.
8 But Congress is the body that created it. That's
9 a small example -- not a small view, but that's a
10 specific example where I believe we may be
11 exceeding Congressional attempt.
12 MS. JACKSON: Yeah, I guess I'll just
13 again repeat that the other part of Congressional
14 intent was to assemble this group to work on these
15 issues.
16 MR. EVERS: It was more than
17 Congressional intent. They said we had to do it.
18 That's different than Congressional intent.
19 MS. PODZIBA: Two more comments on
20 process and then we'll move to 4B.
21 Lynn?

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1 MS. GOSS: I guess it was my impression
2 that the Negotiated Rulemaking Committee was to
3 clarify the language but not necessarily insert
4 things that would benefit one group or another.
5 And so, I guess part of me feels like
6 we're like putting words in people's mouths, and
7 so, I guess that would go to Tony's argument that,
8 you know, adding some of these things isn't what
9 was intended to putting it back down to the state
10 and local level.
11 And so, when we regulated at a federal
12 level, it's a lot different than when it's
13 regulated at a state level, or a local level.
14 MS. PODZIBA: Janel?
15 MS. GEORGE: Ok, last little point on
16 this, and I'm probably putting on my law professor
17 hat right now. I teach a litigation clinic at the
18 University of the District of Columbia, and this
19 is one thing that we talk about, What is
20 Congressional intent? What is plain statutory
21 language?

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1 The creation of the committee is plain
2 statutory language. Part of what we're tasked
3 with is clarifying what that statutory language
4 is, what it means to aid in the implementation.
5 I actually agree with Tony's point.
6 That doesn't mean necessarily adding new language
7 unless it's of a clarifying purpose. We can't add
8 in new provisions or put in things that we would
9 have liked to have had in the law or would have
10 liked to have seen.
11 What we can do is aid in the
12 implementation and provide the clarification that
13 states and districts need to properly implement
14 the law consistent with the purpose of the law,
15 which again is equity. I think we've all agreed
16 upon the purpose of the law, the purpose of these
17 Title I provisions -- excuse me. I think that's
18 clear. And I think that's what we're all here
19 trying to effectuate.
20 Again I think the means by which we do
21 that is going by the provisions, going through

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1 these provision, having meaningful conversations
2 about what's outside of the scope, what's within
3 the scope, and we only do that again by going
4 through this exercise and breaking down those
5 specific provisions and having these discussions,
6 which it seems like we're proceeding with.
7 But again, some of this is a little bit
8 laborious and it means walking through some of
9 these provisions. But I do think we have to be
10 specific in our concerns and what we're talking
11 about, and I do think we have to leave that out.
12 What this committee is tasked with
13 again is clearing the plain statutory language.
14 MS. PODZIBA: Thank you.
15 Patrick and everyone, I think we'll
16 move to 5B, and Patrick, I'm going to ask you to
17 start off by giving us an overview of the
18 regulatory language.
19 MR. ROONEY: I will say just as a last
20 point on the last set of discussions you were
21 making.

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1 We took very seriously the language in
2 the statute, and I think you can see that from the
3 proposals that we put forward, that we listened
4 alot to the discussion that we had last time and
5 all of your comments and the language that's in
6 the statute and tried to propose things that we
7 felt clarified things in the statute. Like where
8 there is a requirement that states have to
9 identify the languages available to a significant
10 extent, but does not identify what that means, we
11 tried to provide some criteria that states could
12 use without being prescriptive on what that means.
13 So we tried to strike that balance, and
14 I appreciate Tony and others who flagged that for
15 us during the discussion, and I know that will be
16 part of the discussion going forward.
17 But I did just want to say that we are
18 trying to be very aware of the language in the
19 statute and providing clarification where we think
20 it's needed, and we're aware of the balancing
21 point that Tony mentioned.

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1 So on that note, we can move to Issue
2 Paper 5B. Now this is Including English Learners
3 in English-Language Proficiency Assessments.
4 Again, we did share proposed language
5 on this issue paper last time, and the version
6 that's in front of you here is very similar to the
7 version that you saw last time. There are a
8 couple of changes.
9 First, we heard from several of you
10 that there was a need to clarify in the proposal
11 that the English language versions in tests be a
12 uniform statewide test. So you will see that
13 under 3A, that requirement that it be a uniform
14 statewide assessment of English language
15 proficiency. And again that's current practice in
16 all states, so this is just clarifying that in the
17 regulations.
18 Second, there was a lot of discussion
19 in the last session about whether the ELP test
20 needed to be submitted for the same peer review as
21 the Reading Language Arts, Math and Science

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1 Content Assessments. We took that back and talked
2 about it internally, and we think these
3 assessments do need to be subjected to the same
4 peer review requirements that the Reading Language
5 Arts, Math, and Science Content Assessments do.
6 Again, you won't see that here in this
7 proposed language, because it's covered in the
8 same place it was covered when we talked about the
9 eighth-grade math exception.
10 So, I can point you to on the top,
11 while it's on 200.2(d) in the full package, the
12 red-line version, on Page 4 the very bottom, and
13 the top of Page 5 where we identify the
14 assessments that are the subject of peer review
15 and we include 200.6F (1) and (3) are points
16 referencing the ELP assessments. 200.6(3) is
17 referencing the ELP assessments.
18 So I just wanted to point out. So that
19 is now in the full package. It's not necessarily
20 included in this issue paper.
21 Third, there were several questions

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1 about accessibility on ELP tests and we tried to
2 make several changes in order to make that clear
3 about English learners with disabilities who need
4 accommodations on an ELP test. And you can see
5 this -- sorry, it's on Page 21 of the full
6 package.
7 So there's a bolded Roman numeral IV on
8 the full package. I'm starting on Line 14. We
9 talked about the need to provide appropriate
10 accommodations for students for English language
11 proficiency assessments, and this is where -- so
12 sorry.
13 If you then look on Line 17 and 18 of
14 that romanette iv, we specifically reference A(1)
15 ad A(3), so that is referencing students with
16 disabilities who are -- children with disabilities
17 covered under IDEA, and children with disabilities
18 who are on a 504 plan, students on a 504 plan or
19 covered under Title II of the Americans With
20 Disabilities Act is what is referenced under A(1)
21 and A(3).

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1 So the state has to make sure they're
2 providing appropriate accommodations for those
3 students on the ELP test.
4 And then finally the last point, and if
5 you could stay on Page 21 of the full package,
6 sorry for the confusion, romanette v, starting on
7 Line 19, there's a question about whether there
8 needs to be an alternate ELP assessment for some
9 English learners with disabilities who can't take
10 the general ELP test, even with appropriate
11 accommodations.
12 After we discussed it further based on
13 the conversation that we had at the last session,
14 we believe that that is now the case, that states
15 need to have an alternate assessment for students
16 with the most significant cognitive disabilities
17 on an ELP test, for students who cannot
18 participate in the general ELP test.
19 And that's covered under romanette v on
20 Page 19 -- or I'm sorry, Page 21, romanette v,
21 beginning on Line 19.

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1 With that I'm happy to open up the
2 discussion.
3 MS. PODZIBA: Liz? You're up.
4 MS. KING: I appreciate the addition of
5 this language and sort of the response to the
6 conversation we had last time.
7 I just wanted to flag -- and this will
8 get fixed in 200.6 when we talk about different
9 accommodations -- the two areas of intersection
10 between English language status and -- or status
11 in the English learner and status in the child
12 with disability would be the disability
13 accommodations on the native language assessment
14 and the English language accommodations on the
15 alternate assessment.
16 So, if this is covering an alternate
17 assessment of English language proficiency, it's
18 not covering an alternate assessment of the state
19 academic content.
20 So we will cover this in 200.6. I just
21 wanted to flag that.

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1 MR. ROONEY: Liz, that's right. This
2 section is only about the English language
3 proficiency test. So this romanette iv and v are
4 about accommodations on the English language
5 proficiency test and then the need for an
6 alternate assessment for the English language
7 proficiency test.
8 MS. PODZIBA: Lynn?
9 MS. GOSS: Did I hear you say that it
10 also incorporates the ADA? Say that again for me.
11 MR. ROONEY: Yes, and we'll talk about
12 this when we get to 4A, I'm sure, but if you want
13 to look at the reference, if you look at the full
14 package, it's on 200.6, on Page 12 is where we do
15 200.6A, and Line 10 is where we do 200.6A(1), and
16 that's children with disabilities covered under
17 the IDEA. And then Line 16 is Students Eligible
18 For Accommodations Under Other Acts, Including
19 Section 504 of the Rehabilitation Act and Title II
20 of the Americans with Disabilities Act.
21 MS. PODZIBA: That's part of Issue 4A,

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1 so if you don't mind holding off on that, Lynn,
2 we'll get to that, if that's ok.
3 MS. GOSS: Ok.
4 MS. PODZIBA: So on 5B, Aaron, you're
5 up.
6 MR. PAYMENT: So I just did a revision
7 of my dissertation and I'm hypersensitive to
8 certain words. Do we need "that are?" "The state
9 must provide appropriate accommodations necessary
10 to measure students English language that are"...
11 those two words are probably not even necessary,
12 "that are".
13 MS. PODZIBA: Where are you?
14 MR. PAYMENT: I'm under five. So it
15 says "The state must provide appropriate
16 accommodations that are." "That are" can be
17 scratched, because they say the same thing.
18 They're superfluous.
19 MS. PODZIBA: Janel, do you want to --
20 we're going to have battling degrees, English
21 degrees.

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1 Rita.

2 MS. AHRENS: Sure, on I guess Page 2

3 and 3, in the reporting of "providing coherent and

4 timely information about a student's attainment

5 with those standards," can we add in the

6 clarification that it should be in a language that

7 the family can understand?

8 MS. PODZIBA: Page 2?

9 MS. AHRENS: Yeah, Page 2, going onto

10 3, on the issue paper, itself. I want the

11 addition of "in a language that the families can

12 understand". Because it would not be beneficial

13 to have that information in English.

14 MR. ROONEY: Rita, can we make an

15 amendment for you guys to consider? If you look

16 at the full package on Page 23, it's a part of the

17 regs that we haven't changed at all, so we haven't

18 brought it up for you, but under Assessment

19 Reports, starting on Line 12 through 16, that we

20 would just essentially use the same language about

21 making -- we just try to be consistent, so we're

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1 talking about "timely and coherent information"
2 then you'd have the same expectation.
3 MS. AHRENS: Should we reference that
4 particular language then? I just want to make it
5 explicit and then I'm ok with the reference.
6 MR. ROONEY: You want it just repeated
7 here?
8 MS. AHRENS: Alright, sure.
9 MS. PODZIBA: Would that repeat, or
10 I'll do it a better way, Patrick, what exactly
11 would be repeated?
12 MR. ROONEY: Actually Kay is reminding
13 me of that we have slightly different language for
14 you guys to and visit.
15 Sorry, if you actually go in the full
16 package to something that's covered in 200.3, you
17 have an updated language -- or go to Page 7 of the
18 full package. It's the very last line. It starts
19 on Line 47 and then it goes on to the next page.
20 We are going to talk about this more,
21 and so maybe we just want to table this for now

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1 and say that we'll come back to this, but we have
2 proposed for your consideration some language
3 about how you make information available to
4 parents and the public.
5 I'm happy to talk about this language
6 later and then we can make sure that we try to be
7 consistent with the language and put it into this
8 section of 200.6 that we're talking about in this
9 issue paper.
10 MS. PODZIBA: Conceptually, is there
11 any concern about putting in here an assurance
12 that the report is in a language understandable by
13 the parents, and that whatever we do in this later
14 issue will get moved into here as well?
15 Is there any concern about that? Is
16 everyone ok with that?
17 Ok.
18 Alright, Delia?
19 MS. POMPA: My comment is going to be
20 that I don't have any comments about this. I
21 think this captures everything we talked about the

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1 last time.

2 I do have a question, though, and it

3 may come up in regulations that the Department

4 does that don't include negotiated rulemaking, but

5 I do want to just put the bug in your ear about

6 screeners.

7 I know this is particularly about the

8 annual English proficiency assessments, but as you

9 probably know in identifying students, to be

10 designated as English learners most states use a

11 version of theses English language proficiency

12 assessments as screeners, and I totally recognize

13 this is not part of this today, but I do want to

14 put that bug in your ear, because this would be

15 the only place I could think of where it would

16 come up unless you find a place for that sort of

17 thing, and it's very important in terms of the

18 validity of the assessments.

19 MS. PODZIBA: Thomas?

20 MR. AHART: Thank you.

21 On that last point, I just want to flag

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1 that. I at least want to recognize, because I
2 don't know what those changes will be in light of
3 that reference, but certainly to the extent
4 practicable would be important. I'm thinking
5 about the wide range of languages and often times
6 you don't find anybody literate in a language
7 spoken by two or three of the students. It's just
8 important that there is some reasonableness there.
9 MS. PODZIBA: That "to the extent
10 practicable" is what we're likely to see.
11 Lynn, do you have another comment?
12 MS. GOSS: No, thanks.
13 MS. PODZIBA: Ron?
14 MR. HAGER: Thank you.
15 And this is actually referring earlier
16 to Tony's comment about English learners with
17 disabilities and how language proficiency is part
18 of the content standards. So it is actually
19 specifically spelled out here, where in the other
20 one it wasn't. But that is where the dovetailing
21 is.

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1 So if you have a student with a
2 disability that's also an English learner, you
3 know, you can, through accommodating the
4 disability and English, both, you could measure
5 language proficiency in other matters.
6 So if someone knows American Sign, or
7 if there is a Spanish version of American Sign,
8 they would demonstrate the proficiency, kind of
9 merging both together.
10 MR. EVERS: Thank you.
11 MS. PODZIBA: Any other discussion of
12 5B? Tony has nothing else, so I think we're good.
13 So the only outstanding item then,
14 which is not in dispute, is that language will be
15 carried in I think from issue three? Is that
16 where it comes up? It will be carried in, and we
17 will be sure that it includes "to the extent
18 practicable".
19 Ok. Leslie?
20 MS. HARPER: I will of course carry on
21 from my previous issue with the Puerto Rico

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1 exceptions. So, again in the English language
2 proficiency section, it would say, 933,
3 "Developing uniform statewide assessment of
4 English language proficiency, excepting programs
5 of instruction through Native American languages
6 and Puerto Rico languages," because that's an
7 exception given to Puerto Rico. It's related to
8 the same issue.
9 And then part B, "Requiring each LEA to
10 use such assessment annually," again "except
11 programs of instruction through Native American
12 and Puerto Rico languages". So I mean just again,
13 equating the limited Spanish language proficiency
14 with limited native language proficiency
15 provisions.
16 I'm not trying to get out of
17 assessments. We're then saying we could provide
18 them as a content area, language arts assessment
19 as a separate content area. We could provide
20 schedules, that makes sense.
21 Our experts at the last meeting, when

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1 they presented to us, talked about developing
2 academic language proficiency over an up to
3 eight-year time span.
4 So, again, assessing English language
5 proficiency should be on a reasonable and rational
6 schedule.
7 MS. PODZIBA: Patrick, did you want to
8 respond?
9 MR. ROONEY: Could I just ask a
10 clarifying question, Leslie, to make sure I
11 understand.
12 This is about the English language
13 proficiency test?
14 MS. HARPER: Yes.
15 MR. ROONEY: Would you want students in
16 Native American medium schools to take a Native
17 American proficiency test for that language,
18 whatever the language was? Is that what you are
19 proposing in place.
20 MS. HARPER: Certainly we do, and we
21 would want to be excepted from annually, starting

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1 in kindergarten, starting at a time that's
2 inappropriate.
3 We would say at a certain amount of
4 time after English because the medium of
5 instruction, more than fifty percent of the time,
6 you know, and we could describe how that would
7 play out.
8 But it would hold it off. If they have
9 to start that in kindergarten when they're not
10 even being instructed in English, it doesn't make
11 sense. And, you know, it's caused our students to
12 be pushed out of our native language emersion
13 schools. In our experience and in the past, we've
14 had to actually not provide our education in our
15 native languages where our tribes and our
16 communities have designated that as a priority.
17 MR. ROONEY: I think I understand. I
18 feel like maybe I want to make sure I totally
19 understand.
20 So you're saying that a kindergartener
21 in your schools would take, instead of an English

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1 language proficiency test, they would take an
2 Ojibwe language proficiency test?
3 MS. HARPER: Yes, or the native
4 language in which they are instructed.
5 And then as English language arts as a
6 subject is introduced, which it is in all or
7 native language medium schools in the U.S., it
8 becomes a subject of study, just like it is in
9 Puerto Rico, then you would begin a schedule of
10 proficiency assessments as that is, you know,
11 appropriately built into the student's academic
12 learning schedule.
13 MR. ROONEY: Ok, thanks. I just wanted
14 to make sure I understood that correctly.
15 MS. HARPER: We're still on Puerto
16 Rico. We're asking for the same considerations.
17 MR. ROONEY: That's a question we'll
18 have to take back, as we did under 5A.
19 MS. PODZIBA: Audrey.
20 MS. JACKSON: I'm just curious -- this
21 is just to ponder. We don't have to discuss it

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1 now, necessarily -- but if there are any
2 safeguards or guardrails, or the term to use, to
3 to protect students or to guard against states
4 sort of lowering the bar for what it means for
5 students to have English language proficiency in
6 order to make a higher likelihood of more students
7 to reaching proficiency or improving over time.
8 MS. PODZIBA: Aaron?
9 MR. PAYMENT: So this may help you to
10 understand.
11 So, I think what we're asking is
12 actually a compromise, because what we're asking
13 for is that -- we're not asking to be exempt from
14 the state working to develop the assessment tool.
15 We're asking for any circumstance where they can't
16 do it, that those students be exempt. And we're
17 talking about very narrowly about those emersion
18 schools, so let me give you an example of the way
19 that this could work, and in some states it works
20 very well.
21 So in Michigan -- we had to fight for

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1 this for years and years and years -- but we have
2 now -- so our language instructors originally were
3 traditional people in our community and they were
4 not college-educated people.
5 So probably about fifteen years ago we
6 decided that it's in the best interest of our kids
7 for us to get the credentials to understand
8 cognition and writing and everything.
9 So, in Michigan we passed a law
10 probably about eight years ago that allows for
11 deference to state -- tribal certification of
12 language instructors in our native language, and
13 so it defaults to us. And so we have that in
14 place now.
15 So, at our tribal school we have a guy
16 who is -- he didn't learn the language
17 traditionally. He learned it through higher
18 education. He became fluent through that process.
19 He's also an educator and he has a doctorate
20 degree. But it doesn't meet the typical
21 certification in the state, but it gives deference

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1 to tribal governments in a
2 government-to-government relationship.
3 And so we developed our own
4 certification process that mirrors the state, but
5 it's a matter of sovereignty then, because we then
6 certified that language instructor to provide and
7 implement our understanding in our own school
8 system. And we're very stringent in our
9 standards.
10 So I think that what we're asking for
11 is that the state be allowed to try to take an
12 attempt at it and try to negotiate it with the
13 respective tribes.
14 Remember you're going to have several
15 different languages that you try to do this with,
16 so it's got be to practicable. And if you aren't
17 able to do it, if it just can't be done, then
18 there's an exception like Puerto Rico.
19 So that's what we're asking for.
20 MS. PODZIBA: Delia?
21 MS. POMPA: I was going to ask Audrey

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1 if your question was generic to English
2 proficiency tests across all states? Is that what
3 you were asking?
4 Is there a danger that states could
5 make their standards so low?
6 MS. JACKSON: Yeah, I guess it is
7 generic. I wouldn't say that they would
8 necessarily have to be "so low," but I'm concerned
9 about -- if the goal is to move children to
10 English proficiency levels, and that's part of
11 your accountability system, it seems like there
12 should be some safeguard.
13 I don't know if that's within the scope
14 of this.
15 MS. POMPA: I do think there are
16 safeguards in the law.
17 MS. JACKSON: Ok.
18 MS. POMPA: I think for one, the fact
19 that this has to go through peer review now will
20 make a difference. The fact that these have to be
21 based on the standards that are set by the state.

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1 MS. JACKSON: Ok.

2 MS. POMPA: And then also I think the

3 fact that the authority has now gone to the state,

4 there's a lot of room for advocacy at the state

5 level to make sure that doesn't happen.

6 MS. JACKSON: Thank you for addressing

7 that for me.

8 MS. PODZIBA: Are there any other

9 questions or issues related to Issue Paper 5B?

10 So we've got two outstanding pieces,

11 one, reports to parents in a language

12 understandable to them to the extent practicable,

13 and another about a possible exemption for Native

14 American medium schools.

15 People want a break or can we move

16 right into 4A? It doesn't feel like we've been

17 sitting that long.

18 Let's start 4A. There will probably be

19 a good reason to call a break in the middle of it.

20 So, Patrick?

21 MR. ROONEY: Alright. So, I will start

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1 this, and then there will probably be a break at
2 which point we want to hear from the subcommittee.
3 MS. PODZIBA: Thank you, right.
4 MR. ROONEY: You want me to do this
5 first before I go into the text in the issue
6 paper?
7 MS. PODZIBA: What's your preference
8 subcommittee? Maybe have Patrick introduce it and
9 then we'll have the report out from the
10 subcommittee?
11 Ok.
12 MR. ROONEY: Alright, and there's kind
13 of a natural break before we get to the alternate
14 assessment --
15 MS. PODZIBA: Excuse me. Before you do
16 that, did the subcommittee report get circulated
17 yet?
18 MR. ROONEY: It should be in your
19 binders, but I'm not positive.
20 MS. PODZIBA: I don't know if it was in
21 binders.

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1 MS. PODZIBA: We're circulating it as
2 we speak.
3 MR. ROONEY: So there is a lot of text
4 in this issue paper. There is lot of text in this
5 issue paper. There was a lot of discussion last
6 time, so that makes sense.
7 So based on the discussion, and further
8 discussions that we had in the Department after
9 the discussion at our first session, we have
10 proposed the language for our discussion starting
11 on Page 2 of this issue paper.
12 A couple of things in the first page
13 and a half that I'll go through, then I'll take a
14 break, in Section A, so the first part of Section
15 A, we have rephrased how we're trying to identify
16 these students. So instead of saying,
17 "accommodations for students," we're saying
18 "students eligible under IDEA and other acts". So
19 we tried to change that phrasing based on the
20 discussion we had in our first session. So then
21 that will then set up a lot of how we

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1 cross-reference other pieces throughout the reg.

2 So now it's "children who are eligible

3 for accommodations," and we broke it into three

4 pieces. So it's "all children with disabilities"

5 as defined under 602(3) of the IDEA.

6 And then two, which is actually a

7 subset of one, that our "students with the most

8 significant cognitive disabilities who are

9 identified by their IDT teams among students" in

10 Paragraph A(1), or children in A(1).

11 And then three is the new piece where

12 we tried to clarify -- remember the statute had

13 the phrase "other acts"? And in the previous

14 regulations, in the affirmed regulations, we

15 referenced students under 504 Plan of the

16 Rehabilitation Act.

17 And we tried to clarify that that would

18 be, "students eligible for assessment

19 accommodations under other acts, including Section

20 504 of the Rehabilitation Act and Title II of the

21 Americans With Disabilities Act," and that I think

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1 was a recommendation that that's one flag for us
2 to also make sure we reference Title II.
3 So the language that then follows below
4 that is very similar to the version you saw in
5 Issue Paper Six on the first session, but we
6 changed the language throughout that section to
7 reference "students eligible for accommodations"
8 instead of "students with disabilities".
9 If you look on A(3), which -- if you
10 look at, sorry, B(3), on Page 3, it's the red text
11 on the second page -- on the third page. This is
12 a new paragraph that requires that "States must
13 ensure the use of appropriate accommodations on
14 assessments. Do not deny a student eligible for
15 accommodations the opportunity to take a state
16 assessment or provide a benefit that is not equal
17 to the benefits provided to students who do not
18 need accommodations".
19 So that is a mouthful that is
20 consistent with the language that we saw in Issue
21 Paper 5A, and we talked about making sure there is

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1 not -- there is the same benefit afforded to
2 students who take an accommodated form of the test
3 versus students who do not take an accommodated
4 form of the test.
5 And we think this is necessary to be
6 consistent with Section 504 of the Rehabilitation
7 Act and also Title II of the Americans with
8 Disabilities Act, to make sure it's not
9 prohibiting or making any discrimination against
10 students with disabilities.
11 I might stop there before I get into
12 the next section, which then gets into alternate
13 assessments aligned with achievement standards,
14 where you might want to hear from the sub group,
15 but it might be good first to see if anyone has
16 any comments on the first page and a half of the
17 proposed text.
18 MS. PODZIBA: Ron?
19 MR. HAGER: So did you want us to hold
20 off on the reporting out of the subcommittee until
21 we get to the four, which would basically be 4B,

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1 which is c?

2 MR. ROONEY: No. I was actually

3 proposing that we just talk about what you see on

4 all of Page 2, and then Page 3 through number

5 three now, and then we can take a break and we can

6 hear from the sub group after that, before we get

7 to what starts with little letter c on Page 3 of

8 the proposed text.

9 Does that make sense to the group?

10 MS. PODZIBA: Let's do that. So we're

11 opening discussion on Page 2 and 3, up to and

12 including the red paragraph number three.

13 Lynn?

14 MS. GOSS: So this goes back to the

15 question about the ADA. And I know that there's a

16 requirement in your 504 processes and in your IAP

17 processes that that's where you're determining the

18 accommodations and modifications for that

19 particular student.

20 How are the accommodations and

21 modifications going to be processed for students

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1 that don't fall under those categories and fall
2 under these other acts?
3 Is it just somebody just says, I want
4 to have, and then they get? Or I guess I need
5 some clarification as to how do we determine how
6 that process is going to look like on the ground.
7 Because I can see that being either
8 highly abused or I could see it highly, you know,
9 unused to its potential.
10 So, I see it being problematic.
11 MR. ROONEY: So maybe I need to get a
12 little bit more clarification on that.
13 I would point to Page 3 of the text
14 just below the struck-out piece which talks about,
15 "The state must develop, disseminate information
16 on and promote the use of accommodations to ensure
17 that all students eligible for accommodations
18 participate in the assessments for the grade in
19 which the student is enrolled".
20 So there is an expectation that the
21 state is identifying the accommodations and

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1 providing -- disseminating and providing the use
2 of those accommodations, and also providing
3 support to special education teachers and other
4 staff around the selection and use of those
5 accommodations.
6 So that would be part of what the
7 state's required to do, right?
8 MS. GOSS: But that doesn't answer the
9 question then what the process is on how you would
10 get to what those accommodations would be for that
11 particular student.
12 It might give you the guidelines of
13 what an appropriate accommodation could be for a
14 student, but it doesn't talk about how you would
15 determine an accommodation for a student who
16 doesn't have a process in place to determine
17 accommodations, even if it's at the state level.
18 MR. ROONEY: So let me see if I can get
19 clarification on that and we will get back to that
20 question, Lynn. I don't know the answer off the
21 top of my head.

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1 MR. PODZIBA: Regina, was your comment
2 going to go to Lynn's question?
3 MS. GOINGS: Yes. I think when we're
4 talking about accommodations we're talking about,
5 not just for our students with LMPs but also those
6 under 504, the process is very similar where there
7 is a meeting and accommodations are discussed and
8 they are written, as they are in the LMP, although
9 the forms are different.
10 So accommodations, there is a process,
11 and the process is very similar.
12 MS. GOSS: I know that there's a 504
13 process and an IEP process. That wasn't my
14 question.
15 My question was, if somebody -- if
16 there is student C, you know, you could have an
17 IEP student and a student with a 504, and then you
18 could have a student that may just fall under this
19 other category of just having a disability but not
20 having an IEP or 504...
21 Can they, under this, then just state

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1 that they get an accommodation?

2 MS. GOINGS: I guess I would have to

3 understand what the disability is, because if

4 there is a disability --

5 MS. GOSS: That's my question.

6 MS. GOINGS: And I guess if there is a

7 disability, should 504 or an IEP be considered,

8 and so that is up to the teams --

9 MS. GOSS: But that's not what this

10 says.

11 MS. GOINGS: So if you could define

12 exactly what that student would look like, the

13 student with disabilities, who does not fall under

14 Section 504 or an IEP.

15 MS. PODZIBA: Ok, Patrick.

16 MR. ROONEY: I think we're still trying

17 to figure it out.

18 So this is a new part of the regulation

19 that was added, partly because of the discussion

20 of this group in session one. Previous

21 regulations just focused on a child with a

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1 disability covered under IDEA and a student
2 eligible under a 504 plan.
3 It was flagged that there may be
4 children who don't fit into either of those first
5 two categories but are covered under Title II of
6 the Americans with Disabilities Act. I don't know
7 if there is an existing process. That's what I'm
8 trying to get to your point, Lynn.
9 Ron, I don't if you've got -- do you
10 know the answer to that?
11 MR. HAGER: Yeah.
12 Department OF ED STAFF MEMBER: I think
13 we're talking about students who are not eligible
14 for state services under IDEA or Section 504, but
15 they're claiming accommodations under Title II.
16 Is that how you read this regulatory,
17 this proposed provision, Lynn.
18 MS. PODZIBA: Ron?
19 MR. HAGER: I do and I have a technical
20 amendment to kind of fit all this together. It
21 won't deal with the issue of ELL students and

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1 their process, but there is a quote, unquote
2 "process" for students with disabilities under
3 Title II. It's much more loosey goosey, but there
4 is a requirement that every public entity have a
5 process for accommodations, but it's not as
6 specific. There's not necessarily a team.
7 So, if you want I can kind of suggest
8 the technical change up here and then you can kind
9 of parallel down below where you have the process
10 for the IDEA and 504 students.
11 MS. PODZIBA: Sure.
12 MR. HAGER: That might be the way to
13 go.
14 So the first thing would be, you've got
15 the students with disabilities under IDEA, ok,
16 under A(2). Then you have A(3), students with
17 disabilities -- or whatever, under 504 and the
18 ADA. What I would suggest is you have, three,
19 would be the students under 504, and you would
20 say, and four, Title II of the ADA, to make clear
21 that they're separate.

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1 Then when you do the process, you can
2 refer for each group of students to that
3 appropriate process.
4 So then when you go down below to
5 sublet i, you've got the students with
6 disabilities, pursuant to the IEP team. That's
7 the sublet i. And then sublet ii would be for
8 504, it would be the placement team. And then for
9 three, you would say for students with
10 disabilities under Title II of the ADA -- or
11 students covered under Title II of the ADA,
12 pursuant to the school districts or states or
13 whatever, appropriate Title II process.
14 So they're supposed to have a Title II
15 process. It's not as spelled out anywhere really.
16 There were some requirements. It's
17 very different than 504. So this would give the
18 reference to the process without telling the
19 states what the process is.
20 I think that may be the simplest way to
21 kind of have this parallel system covering all

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1 groups.

2 I mean, a student that meets the

3 definition of "disability" under Title II would

4 probably also meet the definition under 504, but

5 this gives the student -- it's kind of trying to

6 play out with the provision of "in other acts".

7 Parents may choose to go under 504 --

8 sorry. Parents may choose to bypass 504 and just

9 ask for the accommodations under the ADA. It's

10 just an accommodation. So that's why I think we

11 want to have this in here, and then if they do

12 choose to use the ADA, then it is the ADA process.

13 So that's all you need to say in your

14 regulations is that for the ADA group it would be

15 the Title II ADA accommodation process.

16 MS. PODZIBA: So let's look at that

17 proposed change. So let's look at that.

18 So any questions or comments about

19 breaking out students under Title II of the

20 Americans with Disabilities Act as a separate

21 number?

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1 MS. KING: You need to add I think at
2 the end of that "and other acts".
3 Sorry, you Number 4. So it should be
4 (4), "students eligible for assessment
5 accommodations under Title II of the Americans
6 with Disabilities Act and eligible under other
7 acts," or something like that.
8 MS. PODZIBA: Take it out of three?
9 MS. KING: Yeah, sorry.
10 So the problem is that there is a later
11 reference to an IEP team and a later reference to
12 a placement team. And the IEP team only applies
13 to IDEA and the placement team only applies to 14
504.
15 MR. ROONEY: Sorry, a friendly
16 amendment would be, under three, have a sub under
17 three -- three would be "students eligible for
18 assessment accommodations under other acts," and
19 then, "including," and then A would be "Section
20 504 of the Rehabilitation Act" and B would be
21 Title II of the ADA.

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1 MS. KING: Right. The only thing is
2 that for consistency, later you would have to
3 change, where it says for each student under
4 paragraph A(3), it would have to be A(3)(1) --
5 MR. ROONEY: And then A(3) two.
6 MS. KING: Yeah.
7 MS. RIGLING: Because what this does
8 is it gives credence to the statutory language
9 about "other acts," rather than saying that the
10 only two acts at this point, but maybe not in the
11 future, that this applies to are IDEA and 504.
12 MS. PODZIBA: Alvin, did you have a
13 comment on this?
14 MR. WILBANKS: I have a question. I
15 was just going to ask, to include the "other
16 acts," is that a straight follow-in inclusion? I
17 mean, how you go about making the request very
18 different.
19 I just wonder if that's a straight
20 follow-in act? I'm asking a question. I
21 personally would not think so.

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1 MS. PODZIBA: Patrick.

2 MR. ROONEY: Sorry, I didn't understand

3 your question, Alvin. You're saying does --

4 MR. WILBANKS: I don't think, when you

5 say "IDEA or," the others aren't equal, and it

6 seems to me that the applicable here would be

7 IDEA, not necessarily ADA like the others.

8 I'm just asking, is this add a

9 straightforward add, or is it a little bit of

10 overreach?

11 MR. ROONEY: So I think our

12 understanding is that the statute says "students

13 eligible under IDEA and other acts," and we're

14 trying to clarify what those other acts could

15 include.

16 I don't think we're making that -- I

17 don't think we're trying to make any statement

18 about the weight of one versus the other.

19 I think we're trying to help clarify

20 the language that's in the statute, which I

21 think -- the phrase "other acts" to us seemed, and

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1 I think we talked about this last time, seemed a
2 little unclear as to what that could possibly be
3 for states and districts to try to figure out what
4 kids is the law talking about, which is why we're
5 kind of trying to clarify it.
6 MS. PODZIBA: Ron.
7 MR. HAGER: I was just going to direct
8 to you, Alvin, the reason why you need to have
9 that "other acts" still in there is that is in the
10 statute.
11 So I think Congressional intent there
12 was there could be acts in the future that come
13 out. They didn't want to limit it to Section 504
14 in the ADA, but there was no question that they at
15 least included 504 of the ADA.
16 So I think the way that this is
17 structured now does really meet the Congressional
18 intent.
19 Students under the ADA and 504 are
20 protected. Whether we say anything in here or
21 not, they're protected, and, you know, they have

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1 the same entitlements really to accommodations as
2 that students with disabilities under IDEA. There
3 may be a different process of doing that, but if
4 there is a determination that there is
5 accommodation, it's an equal right. They have a
6 statutory right under those accommodations under
7 whatever provision they're under. So if it's a
8 504, they have a right to those accommodations
9 under 504. If it's the ADA, they have a right to
10 those accommodations under the ADA.
11 To having it all here in one place to
12 deal with the types of statutory provisions that
13 protect students with disabilities, so you have
14 got kind of for the states and for everyone else,
15 you have everything in one place. All the types
16 of programs in which students are entitled to
17 accommodations are all addressed.
18 And by making this clarification down
19 below, at least for the three we have the process.
20 For any other acts, we don't know what that
21 process is. We have a process identifying each of

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1 the provisions. It's just really to make it
2 simpler for the states to implement these
3 requirements.
4 MS. PODZIBA: Alvin, do you want to
5 follow up?
6 MR. WILBANKS: I understand what he
7 said, but I don't agree that this -- this is
8 speaking purely for the student's need to have
9 accommodation for educational purposes. It's not
10 life acts or other things which I think ADA is.
11 Again, I'm just saying, I don't think
12 this is a straight follow through addition to the
13 act.
14 MS. PODZIBA: Liz?
15 MS. KING: So I wanted to sort of put
16 Lynn's point into Alvin's question.
17 I mean, the law did not notice this
18 regulation as written currently to create any new
19 right to an accommodation. These rights to
20 accommodations exist already in these other civil
21 rights laws. So for example Title II of the ADA

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1 refers specifically to assessments.

2 So, just to keep that in mind.

3 I mean, we could just say "other acts"

4 and then hope people know that that means 504 and

5 other things.

6 If we had not said it, if we don't say

7 it, it doesn't change anybody's eligibility under

8 those other laws.

9 So we're just spelling out that which

10 would exist either way, whether we said it or not,

11 just because those laws supersede the regulation

12 here.

13 So I wanted to say that. I also wanted

14 to ask for a change from eligible -- and I think

15 maybe this will help clarify -- a change from

16 "eligible for assessment accommodations" to

17 "entitled to assessment accommodations," because

18 we're not talking about children who would prefer

19 an accommodation or would like or would find

20 convenient an accommodation. We're only talking

21 about those children who through a civil rights

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1 law are entitled to an accommodation.

2 And I think if we put "entitled to an

3 accommodation," I think it helps to clarify that

4 who we are talking about is only those children

5 for whom there is provided an affirmative right in

6 one of these laws.

7 MS. PODZIBA: Alvin, does that clarify

8 it for you.

9 MR. WILBANKS: It helps.

10 MS. PODZIBA: Anything else on this

11 issue? This was the original issue that Lynn

12 raised.

13 Kay?

14 MS. RIGLING: I just want to put a pin

15 on that change and check with some people in my

16 office as to whether they're comfortable with

17 that, changing "eligible" to "entitled" to.

18 MS. PODZIBA: Rita, I know you've been

19 waiting.

20 MS. AHRENS: It's a different issue.

21 MS. PODZIBA: Ok. Hang on just a

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1 second. I'll get you next.

2 Ron?

3 MR. HAGER: So you guys originally had

4 "students with disabilities" and you changed it to

5 "eligible for." And so what we're saying is, the

6 eligibility for accommodations is determined by

7 the 504 team or the IEP team or the ADA team.

8 Once that determination of eligibility has been

9 determined, then they're entitled to those

10 accommodations.

11 So that's why we're saying there's an

12 eligibility process in terms of, are you eligible

13 under the IDEA, or 504, in those unique

14 definitions, and once you're eligible under those

15 protections, the next question is are you eligible

16 for accommodations, and if so, what accommodations

17 are you eligible for?

18 Once the team has made that decision,

19 it's an entitlement. In the same way that the IEP

20 team might say, We're going to recommend five days

21 a week of speech, once that recommendation for

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1 speech has been put into the IEP, it's an
2 entitlement. If the school district didn't
3 provide that speech, there would be due process
4 consequences.
5 In the same way, once an IEP or 504
6 team has recommended an accommodation, if that
7 accommodation is not provided, that would be a
8 compliance violation that then would be subject to
9 due process consequences.
10 So that's why there's steps in the
11 process where there's eligibility determinations
12 being made, but once those are made and there has
13 been a decision by the team, you know, 504 or IEP
14 or ADA process, once that's decision has been
15 made, then it becomes an entitlement.
16 So that's why we're asking for that
17 clarification.
18 There is a question mark of whether
19 they are or are not eligible for accommodations.
20 Once the team has made a decision, that question
21 mark has been removed. It's now they're not

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1 eligible to, they're entitled to.

2 I don't know if you understand how the

3 link of the law is in terms of what does it mean

4 when a 504 team makes a recommendation for

5 something. That recommendation becomes an

6 obligation on the school district.

7 MS. RIGLING: Except that right here

8 it seems to be we're still talking about

9 "eligible" for. But like I said --

10 MR. HAGER: Oh, up there.

11 MS. RIGLING: Yeah. I just want to

12 take it back and make sure that that's not a

13 change that anyone in my office has had.

14 MR. HAGER: At that point maybe it's

15 appropriate to use the phrase -- I'm sorry, at

16 that point it may be "eligible," you know in terms

17 of the process of determining it.

18 But as you go on and you continue to

19 use that phrase, like you say, "here and after

20 eligible for," I think we'd say "here and after

21 would be entitled to".

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1 MS. PODZIBA: There are a couple of
2 other voices that may be helpful.
3 Audrey and then Lynn.
4 MS. JACKSON: I just wanted to echo
5 what I think Ron is trying to say, where there are
6 many students in my class who could be eligible
7 for accommodations if their parents decided to go
8 through with a certain process.
9 But that doesn't necessarily mean that
10 when I say that they're eligible that they receive
11 it. They have to elect into it to receive it and
12 be entitled.
13 I don't think you necessarily heard
14 that.
15 MS. PODZIBA: Did you hear Audrey's
16 point, because it may be helpful?
17 MR. ROONEY: No, sorry. Could you
18 repeat it, Audrey.
19 MS. JACKSON: I was saying that I am
20 concurring with what Ron was trying to say where,
21 from a teacher's perspective, I have many students

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1 in my class who clearly could be eligible for
2 certain accommodations if their parents decided to
3 pursue seeking those accommodations or diagnoses
4 through an IEP or 504 Plan. But just the fact
5 that they could be deemed eligible doesn't
6 necessarily mean that then they would have it.
7 I can't just say, "Oh, they get this
8 accommodation on this particular test because I
9 deem that they are eligible, or I know they would
10 be eligible. You have to go through that route,
11 and then once they are deemed eligible they become
12 entitled, but through the official process.
13 I think I said it better the first
14 time.
15 MS. PODZIBA: Lynn.
16 MS. GOSS: I guess a couple things come
17 to mind. First of all, is there an actual team
18 that makes these decisions where the school is
19 involved with the ADA with Title II, and how
20 does -- under an IEP or a 504, you have money
21 appropriated through the schools and through the

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1 state, how is the accommodations covered
2 financially if it's a Title II in this instance?
3 So, to me, if the money is going to
4 follow the mandate, where is the money coming from
5 for the Title II ADA accommodations?
6 MS. PODZIBA: Ron, do you have an
7 answer?
8 MR. HAGER: It's the same for Title II 9 and 504.
10 So the idea is the only one that has
11 extra money that accompanies the law.
12 So under 504, if you already get any
13 federal money, you're bound by 504, the money you
14 already got. So you don't get any extra money for
15 504 or the ADA.
16 So it's really this is a provision of
17 Congress. The laws basically have already been
18 passed. Even though you don't get any money to do
19 it, as Liz says, it's already required. Under
20 both 504 and the ADA, accommodations and
21 assessments have already been required. They just

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1 don't happen to have any additional funding.
2 But the accommodations are the same
3 types of accommodations: extra time, tests read,
4 you know, those kinds of things that typically I
5 think the expectation is they shouldn't be very
6 expensive. Some there are, obviously.
7 MS. GOSS: That's the job that I do
8 every single day.
9 MR. HAGER: Right, right.
10 MS. GOSS: When I'm working as a
11 paraeducator, I am the one that's implementing a
12 lot of these accommodations, and there aren't
13 enough of us to go around. To actually have us in
14 the classroom and being able to do the things that
15 we need to do, then, you know, it's hard to know
16 how we're going to make that happen and make it
17 feasible.
18 MR. HAGER: The point is since 1990
19 this has been an obligation, without any extra
20 funds. And for 504, since 1973, this has been an
21 obligation, without any extra funds.

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1 So we're not adding any laws here.
2 These are already on the books. They have been on
3 the books for dozens of years. So that's really
4 just all we're saying.
5 That let's everyone know what the laws
6 are. When we're doing our assessment system and
7 we're including students with disabilities, we
8 need to make sure we're including all the students
9 with disabilities under all the different rights
10 that they're entitled to.
11 MS. PODZIBA: Regina.
12 MS. GOINGS: Unfortunately IDEA has
13 never been fully funded, so school districts have
14 had to look into pockets to support it. One of
15 those pockets has been Medicaid, and now that
16 school districts can get reimbursed for services
17 through Medicaid, that supplements some of the
18 funding that IDEA provides.
19 But, we know that part of the problem,
20 too, is lack of staffing, and we try to be
21 cognizant when we are having the IEP meetings, or

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1 any team meeting for that matter, that we provide
2 reasonable services that can be reasonably
3 achieved, and that is sometimes difficult because
4 you go into a room, you've got a list, I've seen
5 kids in IEPs where they're thirty-five, forty
6 pages long and nonachievable.
7 So what we try to do is try to look at
8 what's best for the child and what they can
9 achieve hopefully within one year or less.
10 So I don't know if that answers your
11 question, and I know it's hard for
12 paraprofessionals because I supervise them, and I
13 he see how ragged they're run and how difficult it
14 is for them to provide for accommodations.
15 That's why it's very important that
16 when we're doing IEP's, or any meeting for that
17 matter, to make sure that what we do is
18 reasonable.
19 MS. PODZIBA: I don't want to go to far
20 into operations. I want to stay on the reg text.
21 If there is a final comment.

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1 I know Kay said she wants to take this
2 back, and Rita has been very patient waiting for
3 our new issue.
4 Any final comments on this item?
5 Ok, Rita, new issue.
6 MS. AHRENS: On Page 3, romanette i,
7 under alpha numeric two, where it says that in the
8 statute, "develop, disseminate information on and
9 promote the use of appropriate accommodations to
10 ensure that all students eligible for
11 accommodations," I wanted to clarify whether that
12 "disseminate information on" is just to school
13 teachers and administrators, or whether that's
14 available also to parents?
15 I raise this as a flag because, you
16 know, I work with parents who have shared that
17 there are times when they cannot understand the
18 accommodations available to their students because
19 the IEP teams are not translating or interpreting
20 these. So sometimes they're asked to sign
21 documents on which accommodations their child will

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1 receive without actually understanding what those
2 accommodations are.
3 And so if the intent here is to provide
4 information on eligible accommodations to parents,
5 as well, them I would recommend that we do as we
6 did in 5A and make sure that, to the extent
7 practicable, that it is in a language that
8 families can understand.
9 This is a very important issue to
10 limited English proficient parents who are having
11 difficulty supporting their students who have
12 disabilities.
13 MS. PODZIBA: Patrick, can you answer
14 that question?
15 MR. ROONEY: So the language in the
16 regulations doesn't speak to that particular
17 point. The way most states have operationalized
18 this is by making information about their
19 accommodations available pubically and then
20 providing guidance to all their districts to
21 provide further down to schools and parents and

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1 IEP teams. I think that's typically how this has
2 been in practiced.
3 Others at the table who work on this
4 more closely in their own jobs that states or
5 districts or school level might be able to clarify
6 that, but that is more or less how I believe the
7 practice is carried out.
8 MS. PODZIBA: Regina.
9 MS. GOINGS: There are safeguards that
10 are given to parents. Some I've seen read like
11 Miranda rights. So it just depends on the local
12 level how it's presented. But parents are to be
13 explained the process and it's supposed to be in
14 their language and a language that is
15 understandable to them.
16 Now do schools always follow that? I
17 don't know.
18 MS. AHRENS: Well, I think my -- if
19 nobody dissents, I would like to clarify this so
20 that we do provide that safeguard.
21 I mean, it's already supposed to

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1 happen, but I'm telling you there's actually a
2 civil rights case complaint in New York City from
3 parents who have not received IEP information in a
4 language they can understand. And it's
5 problematic. And there are numerous cases where
6 the parents have said that, you know, they just
7 need that information.
8 MS. PODZIBA: Patrick?
9 MR. ROONEY: I think the interaction
10 here between ESSA and the IDEA is relevant, and I
11 do think the IDEA regs address that parents need
12 to be provided information in a language that is
13 understandable to them. So I think that language
14 exists in terms of guidance that goes to all IEP
15 teams. So, I'm not sure here also --
16 MS. GOINGS: It should be.
17 MR. ROONEY: But I mean, that's a
18 separate question than about whether they're
19 meeting the requirement that's in the regulations.
20 MS AHRENS: I guess my question is is
21 there any objection to adding that clarification

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1 in here, to the extent practicable, in a language
2 they can comprehend.
3 MS. PODZIBA: Kerri?
4 MS. BRIGGS: Not necessarily an
5 objection, but I assume that the guidance with the
6 regulation and non-regulatory guidance and IEP was
7 pretty broad, pretty expansive.
8 There is a lot there. And I worry
9 about drafting in just one little piece from that
10 notion here.
11 It just feels like there might be a lot
12 of something that's missed, or if something gets
13 confused in the process.
14 So, I don't know, maybe Patrick and
15 your team can just go back and come back and tell
16 us if what's in the IEP regulations or guidance to
17 parents around this issue, so that if there is a
18 way to just make sure they're in sync together,
19 that might be helpful, before we sort of drop in
20 language, "make sure parents can understand it".
21 That feels like we might cause some problems that

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1 we don't intend.

2 MR. ROONEY: I'm happy to talk about

3 that and see if we can come up with something that

4 seems like an alternative approach.

5 MS. PODZIBA: Delia?

6 MS. POMPA: Sorry, I didn't bring this

7 up earlier. I didn't realize we were leaving A

8 totally. I just thought were were leaving the

9 disabilities part.

10 I just wanted to sort of document,

11 memorialize, make sure it's on the record that we

12 talked about adding something about English

13 learners in here in the general introduction to

14 accommodations and lifting them out of the other

15 acts. And I understand the Department is going to

16 go out and come back with language for us. Thank

17 you.

18 MR. ROONEY: We're going to try.

19 MS. PODZIBA: Liz.

20 MS. KING: Yeah, just two sort of quick

21 thingies. One, I would take out the word

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1 "appropriate accommodations," just because I think
2 it add a confusion about sort of adding a new
3 level of discretion or implying or suggesting a
4 level of discretion that doesn't exist and
5 shouldn't be suggested to exist. Just to me it's
6 confusing. So I would just say "accommodations"
7 rather than having the qualifier "appropriate".
8 And then the other thing is, moving
9 down on -- sorry, I'm back at 200.6B. So that is
10 at the beginning of B and then frankly it comes up
11 several times as a qualifier, and I would just
12 take it out and only say, "accommodations" since I
13 think it's clear that the accommodations we're
14 referring to are those students are entitled to
15 under the list of laws that we listed.
16 But further also, in 200.6B --
17 MR. ROONEY: Sorry, just a flag,
18 "appropriate accommodations" is actually taken
19 straight from the statute.
20 MS. KING: Ok.
21 MR. ROONEY: That is the statutory term

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1 that they use for both students with disabilities
2 and English learners.
3 I think at one point, it was
4 "reasonable" and we changed it to "appropriate
5 accommodations," because that's the actual
6 language from the statute.
7 So I just wanted to flag that for the
8 group's consideration.
9 MS. KING: That's fair. I'm worried
10 that it implies a level of discretion. That's
11 all. So I did want to flag that concern. If we
12 may be bound by the statutory text, then that's
13 what that is.
14 So moving down where it says, I think
15 there's a sentence that needs to be reordered.
16 It's suggests something -- so, it should say --
17 sorry, at the end of that red sentence, it says
18 "the appropriate accommodations such as
19 interoperability with, assistance with technology
20 devices that are necessary to measure the academic
21 achievement of the student relative to the state's

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1 academic standards, then those words, for the
2 grade in which the student is enrolled, should be
3 moved to after "of this section".
4 Because for the grade in which the
5 student is enrolled is referring to both the
6 general assessment and the alternate assessment.
7 (Brief pause.)
8 MS. PODZIBA: Can you see if that's
9 right.
10 MS. KING: I think that's right. So
11 now it reads, "the appropriate accommodations...
12 for the grade in which the student enrolled".
13 MS. RIGLING: Does that apply to
14 students who take the alternate?
15 MS. KING: Yeah, they take grade-level
16 alternate standards. A fourth grader takes an
17 assessment aligned with the fourth-grade academic
18 achievement standards.
19 MS. RIGLING: Content standards, not
20 academic achievement standards.
21 MS. KING: Oh, gosh. We talked about

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1 this so much, and we thought we were right. It's
2 so hard to read it with the strike-outs. I'm
3 going to go back and read and think again.
4 It's a good flag, Kay, and it is part
5 of what we thought about, not wanting to conflate
6 academic standards with achievement standards. So
7 let me just check on that and then just come back
8 to me in a minute.
9 MS. PODZIBA: Mary Cathryn.
10 MS. RICKER: I actually have something
11 from Page 2, so I can wait 'till you're done with
12 this.
13 MS. PODZIBA: Also, the time really
14 flew. Why don't we take a break. So let's be
15 back at 4:00 and we will start with this issue.
16 (Recess taken.)
17 MS. PODZIBA: Could everybody take
18 their seats and we'll keep going.
19 So, when we took the break, Liz and her
20 team were working through this language, so I'm
21 going to turn back to you, Liz, to tell us where

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1 we are.

2 MS. KING: Yeah, so I think that we

3 were right in our original thinking.

4 I just wanted to flag sort of the setup

5 here is that you have grade-level content

6 standards from which you have what are called the

7 challenging state standards, which could also be

8 thought of as the general achievement standards.

9 And then also you have the alternate

10 academic achievement standards.

11 Under the challenging state standards,

12 you have the general assessment, and under the

13 alternate academic achievement standards, you have

14 the alternate assessment.

15 So, it is the case that both the

16 general assessment and the alternate assessment,

17 aligned to alternate academic achievement

18 standards, are both grade-level standards, and so,

19 it is appropriate to move the reference to "for

20 the grade in which the student is enrolled" to

21 refer to both of those assessments and both of

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1 those sets of standards.

2 Unless Kay, does that work?

3 MS. RIGLING: I don't think that works

4 for me.

5 MS. KING: So, should we -- should we

6 come back and talk about it at the next break?

7 MS. PODZIBA: Does it not work because

8 it's not accomplishing what it needs to, or

9 because the grade in which the student is enrolled

10 should not be modifying the alternative academic

11 assessment?

12 MS. RIGLING: I "think the grade for

13 which the student is enrolled" modifies the

14 content standards on which students with the most

15 significant cognitive disabilities are assessed,

16 but that the alternate academic achievement

17 standards are not aligned with the grade in which

18 the student is enrolled.

19 MS. KING: That is not my understanding

20 of the law.

21 So, I wonder, do we think Martha maybe

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1 could weigh in to add to the -- and it may be that
2 I am using the wrong word in one of these things,
3 but I feel pretty confident having consulted with
4 one of my constituencies.
5 MS. RIGLING: Ok, achievement
6 standards are essentially proficiency, above
7 proficiency, and below proficiency. So under the
8 regular assessment, those achievement standards
9 have to be based on the grade in which the student
10 is enrolled.
11 So if the student is in fourth grade
12 and they are proficient on the fourth-grade
13 assessment, that's great.
14 If they're being instructed at second
15 grade but they're enrolled in fourth grade and
16 they're taking the fourth-grade assessment, which
17 they should be, they have to be measured against
18 the fourth-grade proficiency achievement standard.
19 So, they may not be proficient at fourth grade,
20 because they're being instructed at a second- grade
21 level. They're measure is against the

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1 fourth-grade proficiency standard.

2 That isn't true for students with the

3 most significant cognitive disabilities who are

4 measured against alternate achievement standards.

5 MS. KING: But those alternate -- so

6 that fourth grader is taking an assessment

7 aligned, an alternate assessment aligned to

8 alternate achievement standards aligned to fourth

9 grade. Not --

10 MS. RIGLING: Aligned to content

11 standards for fourth grade.

12 MS. KING: Right. So there is all of

13 the alignment in the world applies for all

14 children, both those in the general assessment and

15 general standards, and those in the alternate

16 assessment and alternate achievement standards.

17 I think the second-grade instructional

18 level is a useful example because that's exactly

19 sort of the concern here is not wanting to signal

20 that the alternate assessment is an out-of-grade

21 assessment; that it is a within-grade assessment,

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1 alternate act of achievement assessment aligned to
2 those grade-level alternate academic achievement
3 standards.
4 MS. RIGLING: I'm not sure we're
5 willing to say it that way. I don't think we have
6 ever said it that way. I think that we have said
7 that the alternate assessment is aligned to
8 grade-level content standards.
9 MS. KING: Right, isn't that -- sorry,
10 I think what you just said up there is what I said
11 up here.
12 MR. HAGER: Right, just put it up
13 there. Or grade-level content --
14 MS. KING: You could say grade level
15 twice. They're both aligned to the grade for
16 which the student is enrolled. So in lieu of
17 striking it, you could leave it where it was and
18 then also add it again at the end.
19 Does that work for you?
20 MS. RIGLING: I think for the
21 alternate achievement standards -- the kids who

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1 take the one percent, the alternate against
2 alternate academic achievement standards, we want
3 to make the point those assessments are to be
4 aligned and the instruction provided the students
5 is to be aligned with grade-level content.
6 To my knowledge, we have never said
7 that the alternate academic achievement standards
8 are aligned with grade-level academic achievement
9 standards. We have always focused on the content
10 standards.
11 MS. KING: So, so but it says,
12 "necessary to measure the academic achievement of
13 a student relative to the alternate academic" --
14 if you were to sort of leave out, there's two
15 clauses there, right?
16 "Measure the academic achievement of
17 the student relative to the alternate academic
18 achievement standards under 1111B(1)(e).
19 So I think your concern is not to
20 suggest that we are taking those children who are
21 included in the alternate assessment and assessing

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1 them under the challenging academic standards,
2 right?
3 MS. RIGLING: Right.
4 MS. KING: That is inappropriate,
5 because they are being instructed -- their
6 assessment is aligned to alternate achievement
7 standards, not the general achievement standards.
8 But I'm going up a level, right, which
9 the grade-level reference is up from there. So
10 you have the challenging state standards and you
11 have the alternate academic achievement standards,
12 both aligning to the grade-level standards.
13 MS. RIGLING: Grade-level content
14 standards.
15 MS. KING: Right, yes.
16 MS. RIGLING: One of the problem, the
17 statute now has this term, "challenging state
18 academic standards," which it defines to include
19 both the content standards and the achievement
20 standards, and we would read that to be all for
21 the grade in which the student is enrolled.

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1 So that term applies to the general
2 assessments. We can't use that term when we're
3 applying to the alternate assessments, because of
4 the fact that, in brevity, it has combined two
5 concepts that we think for the alternate
6 achievement assessments are different. Because we
7 want to clearly make clear that they are alternate
8 assessments are aligned to grade-level content,
9 but, not necessarily -- or probably not
10 grade-level proficiency.
11 MS. KING: No, I certainly hear what
12 you are saying, and I totally agree with the
13 construction of the law and the problem that it
14 caused by merging the content and the achievement
15 standards.
16 I'm happy to entertain sort of an
17 alternative way of solving this problem. What I
18 am worried about is a perception that an alternate
19 standards is an out-of-grade standard when it is a
20 grade-level standard that is different.
21 So that is the objective here, and I am

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1 happy to accomplish at that in another way, and if
2 this creates confusion about what the challenging
3 academic standards are, or something else, if
4 there are other words that will fix this, I'm
5 happy to do this in a different way.
6 Because I think you're not disagreeing
7 with my objective, right? You're not disagreeing
8 that the alternate achievement standards are for
9 the grade in which the student is enrolled, right?
10 The question is maybe the efficiency
11 words in here is creating a confusion.
12 MS. PODZIBA: So could I give it a try.
13 So leave the "standards for the grade
14 in which the student is enrolled" where it is.
15 Then "for alternate academic
16 achievement standards under section," da-da-da, of
17 this section "in accordance with grade-level
18 content standards"?
19 MS. KING: I think the --
20 MS. PODZIBA: I thought that's what I
21 heard Kay say, that it's grade-level content

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1 standards.

2 MS. KING: Yeah, I think the problem

3 that Kay was pointing out is that is not a thing

4 in the law because of the merging of the

5 achievement standards.

6 MS. PODZIBA: How about if we flag it

7 and someone will come up with a fix for that. Ok?

8 Alright. Mary Cathryn, did you have

9 another issue?

10 MS. RICKER: Yes, thank you.

11 On Page 2, there is a strike-out, and

12 I'm just looking for clarification on why the

13 "student's IEP team determines" got struck, if the

14 statute actually struck this, or for another

15 reason?

16 I'm just thinking as a general

17 education classroom teacher, I rely very heavily

18 on my invitation to an IEP team, as well as the

19 expertise sitting around an IEP team, to best

20 understand the accommodations I would be providing

21 or assisting with in my general education class.

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1 And so, by removing that, it ends up
2 being very nebulous that the accommodations that
3 are necessary to measure the academic achievement
4 of the students, because it's very nebulous as to,
5 who do I look to as a general practitioner, what
6 the accommodations are.
7 MR. ROONEY: Sorry, I didn't mean to
8 cut you off.
9 It think this is where we changed the
10 language. Before it used to be "students eligible
11 for accommodations" -- excuse me, "students with
12 disabilities," and now it's "students eligible for
13 accommodations".
14 When we re-jiggered the language in
15 order to start with that framing, that we're
16 talking about students eligible for
17 accommodations.
18 In this paragraph we had to start upper
19 level and would say, "of all students eligible for
20 accommodations," we lay out what's here in B. And
21 then if you go down to romanette i, we say, "who

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1 is responsible for identifying the
2 accommodations". And that's we say for each child
3 under A(1) and A(2), which is a student, a child
4 with disability, it's the IEP team that does that.
5 So we changed the reference down under
6 romanette i.
7 MS. RICKER: So you said you just moved
8 it?
9 MR. ROONEY: Right. We covered it down
10 there and then we can cover the 504 plans below
11 that, and then Ron's suggestion to cover whatever
12 the process is for the IEP plan is three.
13 But all of that is around how you can
14 supply appropriate accommodations for the
15 students.
16 MS. RICKER: I really appreciate that
17 clarification.
18 MS. PODZIBA: I think we can move on in
19 these pages.
20 Kerri, did you have something in one or
21 two?

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1 MS. BRIGGS: No, Page 3.

2 MS. PODZIBA: Ok, above paragraph C.

3 MS. BRIGGS: I was curious about

4 romanette ii, "ensuring all general and special

5 education teachers and staff know how to

6 administer assessments".

7 Just more of a question, does that mean

8 like every teacher in the school needs to know

9 this, or is it the teachers in the school that are

10 involved with delivering the assessments?

11 I get that statutory language, so you

12 can just tell me, it doesn't really matter, your

13 question.

14 MR. ROONEY: Good question you pointed

15 out, Kerri.

16 I also think is that this is not more

17 clarified than that. This may be the kind of

18 thing that Guidance could be appropriate, or

19 specifically states often will create, you know,

20 instructions and trainings that they give to

21 districts and then districts administer in their

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1 classrooms to make sure the people who are giving
2 the test understand how to give the test and
3 particularly how to do the accommodation.
4 So I think it will probably look
5 different from one state to the next and from one
6 district to the next.
7 MS. BRIGGS: So states and districts
8 and schools have reasonably figured out how to
9 comply with this provision?
10 MR. ROONEY: Yeah, when we do our peer
11 review, states provide provisions about how they
12 made trainings available to districts, and
13 districts can provide information about how
14 they're making the training available to whoever
15 is administering the test in the schools.
16 MS. PODZIBA: Are there any other
17 concerns up to paragraph C on Page 3?
18 So, we'll keep going. I think it's a
19 good time to ask Ron to do the report-out from the
20 subcommittee, please.
21 MR. HAGER: Yes, and you should all

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1 have the summary. We had the call, it was from
2 2:00 to 4:30. So we had a special group that got
3 tortured more than the rest of you.
4 Anyway, the task as you can see was to
5 discuss -- and this was kind Tony's -- or Aaron's
6 modification of what I think it was Rita's
7 original proposal. The task was to discuss the
8 need for a definition of students with the most
9 significant cognitive disabilities and what such a
10 definition might include if one was deemed to be
11 necessary, and we really didn't get to that direct
12 question.
13 However, we did make some progress.
14 And so, what we did is we did agree upon these
15 principals, and actually one of them, it took an
16 additional meeting to get clarification and get
17 agreement on.
18 But through an initial meeting,
19 follow-up discussion and some e-mails, we did come
20 up with these operating principals, agreed upon
21 principals, that would govern how we approached

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1 this whole question.

2 So that's probably the best way to

3 frame what we did, is how far we got in terms of

4 our discussion.

5 So the first one was the goal is to

6 ensure that students who should take the alternate

7 assessment do take it, and those who should not

8 take it, do not.

9 I think maybe I should go through all

10 four of them and then if people have questions...

11 The next one is, many states are

12 currently accomplishing this goal, and there is

13 concern that some states may not achieve that

14 goal.

15 Next is a recognition of the importance

16 of the IEP teams and their focus on the needs of

17 individual children within definitions, criteria

18 and guidance.

19 And lastly the need to regulate within

20 statutory constraints directives to the state.

21 So those are the four operating

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1 principals that we felt were important as we
2 addressed these two questions.
3 MS. PODZIBA: Any questions about the
4 subcommittee, or do any of the other people who
5 participated want to say anything more?
6 Audrey?
7 MS. JACKSON: I just have a question
8 if you left it open for how to interpret who
9 should and should not take it, or if you're
10 assuming that the one-percent cap the appropriate
11 measure of who should and should not take it.
12 MR. HAGER: Yeah, we're operating
13 within the one-percent rule. The whole thing is
14 how do we effectuate the one-percent guidelines.
15 So the students who do take it, that is within the
16 one percent.
17 I don't think we explicitly said that,
18 but I think that was our whole understanding as we
19 were addressing the law. The law says one
20 percent.
21 So, that was really presumed, I guess

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1 is the best way to put it.

2 MS. PODZIBA: And thank you to the

3 subcommittee for working hard offline and over the

4 weekend.

5 So, Patrick, with that in mind, perhaps

6 you can take us through the next part of this

7 issue.

8 MR. ROONEY: Alright. So back to Page

9 3 of the issue paper. So the next section, 200.6C

10 is where we begin to assess the alternate

11 assessments based on alternate standards.

12 We're going to talk about the

13 one-percent cap and requirements around that in

14 the next issue paper, so this is more of the other

15 components of the alternate assessments.

16 So there are some significant changes

17 based on the discussion we had last week or two

18 weeks ago and internal discussions that the

19 Department had in the interim period. So the

20 language looks pretty different than what you saw

21 in Issue Paper Six last time. A lot of the text

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1 that shows up in the bottom of Page 3 is now
2 struck and stricken through from the text that was
3 there last time.
4 Based on our read on IDEA and the
5 changes that were made to IDEA as part of when
6 ESSA was passed, IDEA requires that all students
7 with disabilities be included in a state's
8 assessment system under Section 1111, which is the
9 work we're focused on here, with appropriate
10 accommodations, and then alternate assessments
11 where and necessary. And then as indicated in
12 their IEP. That's the language in the IDEA.
13 Because of the increased availability
14 and access to accommodations and the focus on the
15 principals of Universal Design For Learning and
16 other changes and advancements that have happened
17 in the field of assessment in the last two years,
18 we believe that the vast majority of children with
19 disabilities can take the general assessment with
20 accommodations, and we believe therefore that the
21 students with disabilities for whom an alternate

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1 assessment is necessary -- and again borrowing the
2 language from IDEA -- are students with the most
3 significant cognitive disabilities will be
4 assessed with an alternate assessment aligned with
5 alternate academic achievements standards.
6 So as a result, our regulations started
7 here in C, and then carrying forward on Page 4,
8 are really focused on the alternate assessment
9 based on alternate academic achievement standards.
10 There was a very fruitful discussion
11 two weeks ago when we talked about some of the
12 language around alternate assessments that
13 measured grade-level achievement standards. We've
14 removed that as we think that students, children
15 with disabilities can now take the general
16 assessment with accommodations, and that that is
17 not necessary for children with disabilities that
18 really -- the alternate assessment is really
19 focused on students with the most significant
20 cognitive disabilities.
21 So, that is the most significant change

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1 that we made to this section.

2 On Page 4 you'll see the requirements

3 for alternate assessments. We did make one change

4 on the top on number one that, before we had "the

5 state has defined alternate achievement

6 standards". We revised that to say "adopted,"

7 because that was the language that was in the

8 statute.

9 And then under romanette i, we talked

10 about the test needs to make -- the state needs to

11 make sure that the assessment is aligned with the

12 challenging academic content standards.

13 This is the conversation Liz and Kay

14 were having, that alternate assessments need to

15 make sure that they're aligned to the grade-level

16 content standard in which the student is enrolled.

17 I think Rich asked a question in the

18 last session about what happens to upgraded

19 students, which we didn't address in the

20 regulations, but typical practice in states is

21 that the student is assessed against the grade

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1 that relates to the age of the student, and that
2 our assumption is that that would continue to be
3 the case through the regulations. We didn't
4 clarify that, but current practice would continue
5 through these regulations.
6 And then the other piece that wasn't in
7 the last version of the regulations in Issue Paper
8 6, that we clarified is here under romanette iii,
9 and we're kind of in the middle of Page 4, about
10 "at a state's discretion it can provide a measure
11 of student growth".
12 We did clarify this. So, I think the
13 language in the statute is "at the state's
14 discretion provides measures of students growth
15 under the alternate assessment," which does mirror
16 the language for all assessments, for the general
17 assessment as well.
18 And we clarified that we're talking
19 about valuable and reliable measures of student
20 growth across the full spectrum of student
21 achievement, and I think that is our way of saying

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1 that the assessment is measuring growth for both
2 low-achieving and high-achieving students, that
3 they need to make sure the assessment is robust
4 enough to measure growth for the full range of
5 students taking the alternate assessment.
6 And then, further, relating to the
7 change we made around "alternate assessment based
8 on grade-level achievement standards," we struck
9 little romanette iii, under Reporting. So now
10 "states will be reporting on the number of kids
11 take the regular, the regular assessment
12 accommodations, and the alternate assessment based
13 on alternate academic achievement standards".
14 And then Number 6 is taken from the
15 statute that the "state may not develop or
16 implement any alternate achievement standard for
17 children with disabilities that are not alternate
18 achievement standards for students with the most
19 significant cognitive disabilities," and this is
20 taken from the statute.
21 So, it might make sense to take a break

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1 there and see if people have questions on that
2 aspect, see if there is any discussion on that
3 part of the text.
4 MR. KING: I'm not sure what we're
5 covering.
6 MS. PODZIBA: We're looking at the
7 bottom of Page 3 through Page 4 up to including
8 paragraph 6, which is in blue bold.
9 MS. KING: Sorry I was looking at the
10 full package. Sorry, can you say the page again?
11 MS. PODZIBA: Sure, Page 3, beginning
12 with paragraph C, Alternate Assessments, up to and
13 including the bolded paragraph 6.
14 MS. KING: Yeah, I have a couple of
15 different things. Most of them are minor.
16 So in C, C(1) romanette iii, "at the
17 state's discretion". I would say, I think this is
18 a little confusing, because it felt as though the
19 state had discretion to use valid and reliable
20 measures. And I would instead change the wording
21 to, "if a state uses growth, uses valid, reliable

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1 measures," it doesn't change the meaning. I don't
2 think certainly it changes the intent. I was
3 concerned about what the discretion is. If we
4 took out "discretion" and used the words
5 "provide," we're referring to valid and reliable.
6 MS. PODZIBA: Let's just get that one.
7 "If the state uses growth"...
8 MS. KING: So strike "provides" and
9 insert "uses".
10 MS. PODZIBA: "The state uses growth,"
11 I think you're missing something.
12 MS. KING: "If the state uses growth
13 measures"... Yeah, is that the word that's
14 missing?
15 MS. PODZIBA: "Measures valid and
16 reliable," read out your whole sentence.
17 MS. KING: I know, it doesn't make
18 sense in my notes either.
19 "If a state uses growth measures, it
20 must," or "those measures must be valid and
21 reliable measures of student growth, across the

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1 full spectrum of student achievement". Something
2 like that.
3 You're point is not that there's
4 discretion about whether or not it's valid or
5 reliable or whether or not it's the full spectrum
6 student of achievement. The discretion is whether
7 or not to use growth at all.
8 If you're going to use growth, it must
9 be be valid and reliable across the whole spectrum
10 of student achievement.
11 MS. PODZIBA: Kay, can you give us a
12 response to that? Does that work? Or Patrick.
13 MS. RIGLING: I think the lead-in is
14 "alternate assessments that" -- it has to work
15 with that lead-in.
16 MS. KING: Alright, then I would say,
17 if it includes measures of student growth, use
18 valid had -- ok.
19 So I would start romanette iii with,
20 "if it includes measures of student growth, those
21 measures must be" -- thank you, "those measures

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1 must be valid and reliable across the full
2 spectrum of student achievement".
3 And you could strike out "measures of
4 student growth" if you wanted to.
5 "If included measures of student
6 growth, those measures must be valid and reliable
7 across the full spectrum of student achievement".
8 MS. PODZIBA: Richard, did you have a
9 comment on this change?
10 MR. POHLMAN: Sorry, I misplaced my note
11 from the morning. So the bolded blue is statutory
12 text that you have gone back and scrubbed and
13 added because it's statutory text?
14 Is that right.
15 MR. ROONEY: Yes.
16 MR. POHLMAN: So then I think that a
17 friendly amendment might be that maybe adding --
18 maybe striking everything you've added here and
19 keeping romanette iii with what the statutory text
20 says, which is "at the state's discretion provides
21 measures of student growth," and then adding

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1 something, a second clause after all of that that
2 said, "if the state chooses to do so, measures of
3 growth must be valid, reliable and across the full
4 spectrum of student achievement".
5 I think the current proposal interrupts
6 the statutory language.
7 Does that make sense, Liz?
8 MS. KING: Yes.
9 MR. ROONEY: So then your suggestion
10 then is romanette iii would be just the statutory
11 blue text, and then you'd make a sub A.
12 MR. POHLMAN: Or add a clause
13 afterwards.
14 MS. RIGLING: Why don't we do exactly
15 what you said and then at the end of the "growth,"
16 "which must be valid and reliable across the full
17 spectrum of student achievement"?
18 MR. POHLMAN: Correct.
19 MS. RIGLING: Or is it, "must be valid
20 and reliable in measured growth across the full
21 spectrum"?

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1 MR. POHLMAN: I think that works.

2 Sorry, this just a friendly amendment

3 to Liz. So I'll actually accede back to the

4 original person, if you'd like.

5 MS. PODZIBA: Is there anyone for whom

6 this won't work?

7 Kerri?

8 MS. BRIGGS: "Across the whole spectrum

9 of student achievement," I haven't seen that

10 phrase in references to both measures before, or

11 am I just not remembering that? I'm not sure what

12 that means here.

13 Does that mean like you're supposed to

14 include all of the achievement levels?

15 MS. KING: I think the policy issue is

16 making sure you're not just measuring growth in

17 the middle, but you're measuring growth at the

18 bottom and the top.

19 I'm looking at the law now.

20 MS. BRIGGS: So that would be across

21 all the achievement levels. So I guess the

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1 assumption is that -- maybe not assumption, but I
2 think there is a requirement about how many
3 achievement levels you have to have. Is that what
4 that's referencing? If you have to have at least
5 three achievement levels?
6 MS. KING: If it's a growth level
7 measurement. It's not actually reference to
8 the --
9 MS. PODZIBA: You're trying to all
10 things at once.
11 Patrick, can you help us out here?
12 MR. ROONEY: So Kerri, you're right,
13 this is new language that we're proposing here for
14 our consideration to discuss today,.
15 The intent is, as you indicated, that
16 we're trying to make sure that if -- and this is
17 in particular with the alternate assessment that
18 is for kids, that measuring growth on an alternate
19 assessment is challenging and in order to do that
20 you want to make sure you're doing it to capture
21 growth for both low-achieving and high-achieving

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1 students on the alternate assessment, which is
2 again I think a particular challenge on an
3 alternate assessment compared to a general
4 assessment where states have a bit more history
5 and practice trying to do it.
6 So, we thought it was helpful to make
7 clear that, if you're going to measure growth on
8 the alternate assessment, that you need to be
9 attending to the full spectrum of performance in
10 measuring both for all of those kids.
11 MS. BRIGGS: Ok, I get the point.
12 Maybe this is completely separate words, but I
13 don't know --
14 MR. ROONEY: We're definitely open to
15 suggestions on the wording.
16 MS. PODZIBA: Thomas, was your point on
17 this item?
18 MR. AHART: Yeah. I'm getting a bit
19 confused on the full spectrum of student
20 achievement when we're talking about the alternate
21 assessment. And I'm trying to find out where is

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1 the delineation between the alternative assessment

2 and the regular assessment.

3 I know that sounds like a very simple

4 question, but I'm getting lost in that I don't

5 understand what we're doing differently for

6 students that are recognized under IDEA and Title

7 IV and VII or 504 as something for which we need

8 to accommodate.

9 MS. PODZIBA: Patrick.

10 MR. ROONEY: So I would say that I

11 think for both the general assessment and the

12 alternate assessment -- here we're just talking

13 about the alternate assessment. For both, there

14 is a permission that states have to measure the

15 achievement for the grade in which the student is

16 enrolled, and then there is the permission for

17 them to measure growth of those students against

18 those standards.

19 So it shows up in 200.2 when we talk

20 about the requirements for general assessments.

21 And then here when we're talking about alternate

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1 assessments, we have the same statutory permission
2 that states can measure growth on the alternate
3 assessments.
4 I think, particularly because measuring
5 growth on an alternate assessment seems
6 challenging. There has not been as much
7 experience with states doing it. And we wanted to
8 make clear that they should be measuring growth
9 for all students, particularly the low- and
10 high-achieving students on the alternate
11 assessment.
12 MS. PODZIBA: Tom, does that help?
13 MR. AHART: I probably won't be able to
14 get any more clear on that.
15 MS. PODZIBA: Kerri on this point?
16 MS. BRIGGS: Yes, so I was looking at
17 the reference where it measures growth on the
18 general assessment and it doesn't look there like
19 it's further explained, so I'm wondering if this
20 is an issue that's better handled with Guidance.
21 I don't have a huge preference on that.

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1 I am just kind of struggling with what -- when I
2 first heard it I thought, and then across multiple
3 grades.
4 MS. PODZIBA: Rita is your comment on
5 this item? Ok.
6 Richard.
7 MR. POHLMAN: I think also just to maybe
8 go to Kerri's comment, there is likely even more
9 that needs to be said about what valid and
10 reliable and across the full spectrum means than
11 what you could even put in the regs. So you're
12 probably going to have to follow Guidance on this
13 anyway.
14 So it may just be best to leave the
15 regulation what is in the statute and pursue of
16 the full breadth of any Guidance. I don't know if
17 that makes any sense.
18 I think Liz's point is exactly right.
19 I think this needs more structure in it, but --
20 MS. PODZIBA: So it sounds like there
21 is a proposal to revise three, so that it says "at

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1 the state's discretion provides measures of
2 student growth."
3 (Dissent from the floor.)
4 MS. PODZIBA: Because that's reg.
5 So what is the proposal? Could someone
6 offer the proposal.
7 Richard?
8 MR. POHLMAN: Sure. I'll start the
9 proposal at you just drop any addition to the text
10 from the act.
11 MS. PODZIBA: That's what I read out
12 and people said that didn't work.
13 MR. POHLMAN: Then I can't offer the
14 proposal.
15 MS. PODZIBA: Ok. Kerri.
16 MS. BRIGGS: I would leave in valid and
17 reliable.
18 MS. PODZIBA: So "at the state's
19 discretion provides valid and reliable measures of
20 growth." So I'm going back to what was there
21 before.

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1 MS. BRIGGS: I'm agreeing with Liz'
2 position. Yes, the way it was originally worded
3 made it look like valid and reliable was a
4 discretionary act, and I don't think that's what
5 anyone intends, ever.
6 So what's discretionary is measuring
7 growth, and if you do it, there needs to be a
8 bottom line.
9 MS. PODZIBA: Ok, so this way. Does
10 that work for everyone?
11 Aaron.
12 MR. PAYMENT: So with measures, if I
13 understood what was intended by the full spectrum
14 of student achievement, I might support it, but
15 it's not articulate.
16 We know that we wanted "valid and
17 reliable". So I think it's a term that -- is
18 there any meaning behind the term or the phrase
19 "across the full spectrum of student achievement,"
20 because we might be fighting for something that
21 nobody really is --

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1 MS. KING: I'm happy to sort of clarify
2 that and then kick it back to the Department.
3 The mean, the meaning of full spectrum
4 of student achievement is making sure that those
5 children who are high achievers on the alternate
6 assessment, that we are measuring the distinction
7 that they are a higher achiever who becomes an
8 even higher achiever, or if they are seriously a
9 low achiever, very much struggling on the
10 alternate assessment, that if they make growth on
11 that level, that we are counting that as well; as
12 well as a child making growth in the middle.
13 That is the meaning of it. But I'm
14 happy to kick it back to the Department sort of
15 more of the -- since, to be frank, I just wanted
16 to make sure we weren't making "valid and
17 reliable" optional. That was my primary concern
18 here. So I'm happy to kick it back to them on the
19 importance of including this piece.
20 MR. ROONEY: I'll just clarify that.
21 There is no specific technical meaning of the

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1 phrase "full spectrum of student achievement," in
2 full disclosure and honesty.
3 I think that Liz's description was
4 accurate and that's the same description I would
5 give you as kind of what we intended with this
6 language. But it's not there's a defined
7 definition of what that means that we can point to
8 in a, you know, a technical or statistical manual
9 that is other than what we just said, or that even
10 would be in the manual.
11 MS. PODZIBA: So is there anyone who
12 has concerns about the language that's on the
13 screen right now?
14 You have a question? Yes?
15 MR. HAGER: I guess it's the word
16 that's included. "At the state's discretion
17 provides measures of student growth," which --
18 it's a "measure of growth," which is "included"
19 the best word?
20 I agree with everything in terms of
21 principal. Is "included" the best word?

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1 MS. KING: I mean you could also just
2 say, right, "provides reliable and valid measures
3 of growth". Would not achieve the --
4 MS. PODZIBA: No, that was what you had
5 the problem with.
6 MS. KING: Oh, I'm sorry. Oh, the
7 irony. It's been a long day.
8 MS. PODZIBA: Marcus, did you have a --
9 MR. CHEEKS: I'm just going to note,
10 it's language of this matter that throws people
11 that are not in this room completely off the
12 process.
13 So I think we have conceded that it
14 counts really lofty and good, but it has no value
15 in terms of adding to the process. So, I just
16 thought I'd put that out.
17 If we're struggling with it, the field
18 is definitely going to struggle with it.
19 MS. PODZIBA: Ok, should we let the
20 Department clean this up?
21 MR. HAGER: Yes, yes.

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1 MR. ROONEY: I think I probably need to
2 consult with some other people before we have a
3 final decision final.
4 MS. PODZIBA: I think the concept is
5 known and we'll let you clean it up.
6 New issue, Rita.
7 MS. AHRENS: And I apologize if I sound
8 like a broken record, but on Page 5, lower case D,
9 alpha numeric three, where parents --
10 MR. HAGER: What page?
11 MS. AHRENS: Page 5, alpha numeric --
12 or lower case D, number three, where we ensure
13 that parents and students elected to be assessed
14 using an alternate assessment aligned with
15 alternate academic standards.
16 I just want to ask that we also either
17 reference the part where that information is
18 provided in a language that we can understand, or
19 we state is it here explicitly, and again I just
20 want to note that we have a lot of violations of
21 this. This is a legal obligation for districts to

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1 do to the extent practicable, so we can add in
2 that phrase.
3 But I will note that this is not being
4 done for Spanish-speaking families as well as
5 Asian-American Pacific Islander-speaking families.
6 So it is a widespread problem and
7 misunderstanding that needs to be clarified.
8 MS. PODZIBA: Ok. Patrick?
9 MR. ROONEY: So I appreciate that
10 suggestion. We haven't quite gotten to Page 5.
11 I'm happy to jump into it if people have
12 questions.
13 MR. HAGER: No, do the one before that.
14 MR. ROONEY: Do the one before that.
15 MS. PODZIBA: Ok, Ron?
16 MR. HAGER: The reg assessments, this
17 the black, is that old reg, the black?
18 MR. ROONEY: Yes. But which part?
19 MR. HAGER: In D, Reporting, sub one
20 romanette i and ii.
21 MR. ROONEY: That's from our current

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1 statute.

2 MR. HAGER: Is it adding to the

3 statute? People are wondering --

4 MR. ROONEY: I think this might be

5 something that was in the regulations under No

6 Child Left Behind.

7 MS. PODZIBA: Liz?

8 MR. ROONEY: But it's something that

9 happened in the last fifteen years, because it's

10 been in the regulations.

11 MS. KING: Sorry, C three, romanette

12 ii.

13 MS. JACKSON: Could you say a page?

14 MS. KING: So I'm on Page 15 of the

15 packet.

16 MS. PODZIBA: Are you on Page 4 of the

17 issue paper?

18 MS. KING: I think I'm on Page 3 of the

19 issue paper.

20 No, then I must be on Page 4.

21 MS. PODZIBA: Could you read out the

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1 beginning of the sentence?

2 MS. KING: So it says three, "the state

3 must, one, not prohibit an LEA from assessing more

4 than one percent".

5 MR. ROONEY: Liz, can I say, that is

6 what we're going to talk about in Issue Paper 4.B.

7 MS. KING: Ok, sorry.

8 MR. ROONEY: Trying to get ahead of us.

9 I appreciate that.

10 MS. PODZIBA: Ron, do you have another

11 item?

12 MR. HAGER: One more. Six in bold, it

13 is the statutory text, however in the title it

14 says "prohibition and any other alternative or

15 modified achievement standards."

16 So the title includes the word

17 "modified," which I think means that that's what

18 they meant they would be covering here. I think

19 that was really what they were most concerned

20 with.

21 So I would propose that in six, where

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1 you have it bolded, "the state may not develop or
2 implement for use under this part any alternative
3 or modified academic achievement standards," just
4 put in the word "modified". Match it to the title
5 of the provision, and I do appreciate how much you
6 did to clarify all that stuff, because we spent a
7 lot of time on this the last time.
8 Thank you.
9 MS. RIGLING: I think that's probably
10 covered by Congress.
11 MR. HAGER: Right, by Congress, and by
12 you. I'm kidding.
13 MS. PODZIBA: Anything else up to
14 almost the bottom of Page 4, Paragraph 7?
15 Patrick, why don't we keep going?
16 MR. ROONEY: So on the bottom of Page
17 4, Number Seven, we have a separate issue paper
18 related to this that's around computer-adaptive
19 assessments.
20 I think based on the conversation we
21 had two weeks ago and then our subsequent

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1 conversations, I think we determined that it made
2 the most sense to split out the computer-adaptive
3 assessments.
4 You'll remember in the statute, they
5 talked about computer-adaptive assessments in one
6 place, and they say, "states may at their
7 discretion develop computer-adaptive assessments".
8 They may also develop computer-adaptive alternate
9 assessments and computer-adaptive ELP assessments.
10 We have put them in the sections where
11 they fit with the rest of their assessments, with
12 the rest of that discussion of that assessment.
13 So number seven is where we discuss the
14 requirements for states if they develop a
15 computer-adaptive alternate assessment where we
16 just take from the statute the one change we
17 clarify in the statutory language is that
18 romanette i, on five, we clarified the assessment
19 must be based on the state's academic content
20 standards.
21 We thought, given the discussion we had

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1 a little while ago, and the confusion about what
2 the test should be aligned to, that it made sense
3 to specify in this section that, if you have an
4 adaptive assessment you need to make sure it's
5 measuring the content standards for the grade in
6 which the student is enrolled.
7 Now, the next section, D, there's a
8 little bolded highlighted section for all of you.
9 This was also in Issue Paper 6, so if I just
10 remind you that a lot of the language that's here
11 is current regulatory components that have been
12 actually just moved from 200.1, which is not
13 regulation we brought to discuss. It's about the
14 state's academic content standards that we are not
15 regulating on, so we didn't bring for your
16 discussion.
17 But this component about the state
18 guidelines for IEP teams is about the assessments
19 and it made more sense actually to move these in.
20 And the statute also included
21 additional components of the requirements states

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1 have for state guidelines for IEP teams, and we
2 wanted to combine those together so they're in one
3 spot. So for that reason we moved much of what's
4 here on Page 5 from 200.1 into 200.6 and made it
5 D.
6 So I think Rita has already flagged for
7 us a question that she has about this around
8 number two here on Page 5.
9 But this sets expectations for state
10 guidelines that if a state adopts alternate
11 achievement standards, then they must make sure
12 they're monitoring implementation with IEP teams,
13 providing guidance to IEP teams about expectations
14 for participating in such assessments, including
15 implications for state graduation requirements.
16 Much of this language is not different.
17 There is the bold blue piece on the bottom of Page
18 5, where we I think just forgot to include this
19 component about... "how participation in such
20 assessments may delay or preclude the student from
21 completing the requirements for a regular high

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1 school diploma".

2 So we clarified that, and then there is

3 the requirement below it, Number 4, that, "taking

4 an alternate assessment may not preclude a student

5 from attempting the requirements for a regular

6 high school diploma."

7 I think that's the end for that

8 section, what I think makes sense. I think we

9 could hold E until the end and just talk about the

10 state guidelines here on Page 5 and 6.

11 MS. PODZIBA: Tom.

12 MR. AHART: Just to be sure that we're

13 being clear on D one, if we could insert in the

14 second line there, "establish long-term

15 implementation of clear and appropriate

16 guidelines" and then add, "as required under IDEA

17 section 612, A 16 C," I think it is, and then

18 continue on as written, just to make sure that

19 folks know that we're still aligning that with

20 current regs under IDEA.

21 MS. PODZIBA: Everyone ok with that?

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1 Great.

2 Are there other discussion points or

3 questions on pages -- bottom of four, five and

4 six, not including E?

5 Mary Catherine.

6 MS. RICKER: My question is from Page

7 6. Again, looking at the deletions and in the

8 middle of the page, especially the portion of

9 "general and special education teachers and other

10 appropriate staff received training on

11 administering".

12 My other clarification of a strike-out,

13 if that is addressed somewhere else or if that --

14 if that is now just a missing expectation.

15 Again, as a general education teacher

16 who may share some responsibility for -- did it

17 just you get moved?

18 MR. ROONEY: Sorry, so the piece on

19 Page 6, I think we realized that it was

20 duplicative, that we had it in two places. This

21 is for guidelines for states if they adopt

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1 alternate achievement standards. But if you go
2 back to Page 3 of the issue paper, looking at
3 romanette i and romanette ii, the top half of that
4 page, I think these guidelines apply to states or
5 all states, whether they have alternate standards
6 or not, and there where it was on Page 6 is then
7 kind of repetitive and applies to states if they
8 adopt alternate achievement standards. So it
9 seems like we didn't need it in both. And putting
10 it in the first location made more sense that its'
11 a clear expectation for all states, regardless of
12 whether they adopted alternate standards.
13 MS. RICKER: I may need to come back to
14 that, because know how to "administer assessments"
15 feels different to me than "received training on
16 administering".
17 So, I'm going to flip back and forth.
18 You can move on, but like I just want to flag that
19 as not feeling congruent..
20 MS. PODZIBA: Ok, Thomas?
21 MR. AHART: No.

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1 MS. PODZIBA: Ron, do you have another
2 item?
3 MR. HAGER: Yes. Under D(2), they
4 "must notify about how it may delay or otherwise
5 affect a student receiving a regular high school
6 diploma".
7 So with delay, you mean delay in terms
8 of it may extend beyond four years?
9 "How participation in such assessments
10 may delay or otherwise affect the students from
11 completing the requirements of a regular high
12 school diploma".
13 So delay is typically meaning beyond
14 the normal course of time? That's what you were
15 thinking?
16 MR. ROONEY: So this is taken from the
17 statute. If you look on Page 27 of the statute,
18 Page 27, B(d), its "ensure that the parents of
19 such student are clearly informed," and B(d) says
20 "how participation in such assessments may delay
21 or otherwise affect the students from completing

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1 the requirements of a regular high school
2 diploma". So we just tried to use the statute.
3 Mary Cathryn, your question, if you
4 actually look on the next page of the statute, on
5 Page 28, that language about how to administer the
6 alternate assessments shows up on Page 28, under
7 Roman Numeral V (aa) at the top of the page.
8 MS. RICKER: I don't have Page 28.
9 Mine goes to Page 25.
10 MS. RIGLING: Are you looking --
11 MS. GOSS: Under Relevant Statutes.
12 MR. ROONEY: Sorry, I was looking at
13 the actual ESSA.
14 MS. RICKER: Got you. Ok. Page 25,
15 where am I looking --
16 MR. ROONEY: Page 28, Roman Numeral V
17 at the top third, and then (aa) underneath it.
18 MS. RICKER: Yes.
19 MR. ROONEY: So that's where that
20 language came from that's in the proposal.
21 MS. RICKER: So the statute takes away

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1 the general education teacher's right to get
2 training and just has an expectation now of
3 knowing?
4 MR. ROONEY: So I think -- I would
5 describe it as the state -- if you look at Roman
6 Numeral V in the statute, it describes in the
7 state plan than general education and special
8 education teachers and staff know how to
9 administer the assessment. I think the way that
10 could be operationalized, but --
11 MS. RICKER: It could, but it won't.
12 MR. ROONEY: We're open to proposals if
13 you have language to clarify this.
14 MS. RICKER: Ok, yes.
15 MR. HAGER: We won't disagree on
16 anything about training.
17 MS. RICKER: You can move on if you
18 want to.
19 MS. PODZIBA: We've got about five
20 minutes so you could also bring it back in the
21 morning, if that's easier.

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1 There was no one that signed up for a
2 public comment. Is there anyone in the audience
3 who would like to address the committee at this
4 time?
5 Ok, so we'll give you some time
6 overnight to do that.
7 Are there any other items on -- yes
8 Patrick.
9 MR. ROONEY: So there's one other
10 thing, this is not tangential, but I wanted to
11 flag it for this group. If you look at the full
12 package in 200.2B(3), I think its line Page 2
13 line -- starting On Line 4.
14 MR. HAGER: Page 2.
15 MR. ROONEY: The full package of the
16 regulation, Page 2, starting On Line 4 --
17 MS. BRIGGS: Clean or tracked?
18 MR. ROONEY: The tracked version.
19 Thank you. Good clarification.
20 So this is the component in 200.2 which
21 describes that states have the general

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1 requirements for their assessment systems, state
2 responsibilities for assessments, and under three,
3 this is about the state making sure the
4 assessments are aligned with the state's
5 challenging academic standards, and specifically
6 that the assessments that feed into this measure
7 the breath and depth of those standards, and then
8 you get to this number two.
9 So with respect to alternate
10 assessments for students with the most significant
11 cognitive disabilities, they measure student
12 performance based on alternate achievement
13 standards defined by the state consistent with
14 1111B(1)(e) of the act that reflect professional
15 judgement as to the highest possible standards
16 achievable as such standards by such students to
17 ensure that a student who meets the alternate
18 achievement standards is not tracked to pursue a
19 post-secondary education or a competitive
20 integrated employment consistent with the purposes
21 of the Rehabilitation Act of 1973".

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1 I'm sorry I read that whole thing, but
2 I wanted to kind of lay it out.
3 The statute where this comes from, this
4 section talks about if states design these
5 alternate achievement standards and assessments,
6 align those alternate achievement standards, they
7 need to make sure they're on track to pursue
8 post-secondary education or employment consistent
9 with -- and they reference Public Law 93212, and
10 that's the Rehabilitation Act, and I think that
11 rather than just repeating the Rehabilitation Act,
12 we actually clarified that the reference to the
13 Rehabilitation Act in 1973 is talking about
14 competitive integrative employment, that that is
15 the purpose, that the assessment system should be
16 aligned to.
17 I just wanted to flag that that is a
18 clarification, that when we talk about the
19 Rehabilitation Act in the statute, that we are now
20 clarifying that in our regulation to say that they
21 should be checking to be sure that they're on

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1 track to pursue post-secondary education or
2 competitive integrative employment.
3 I wanted to flag that as it relates to
4 the 200.6 discussion that we were just having, to
5 know it's not captured in that component of the
6 regulations of the package.
7 MS. PODZIBA: Ron.
8 MR. HAGER: This is consistent with our
9 discussion last time, about -- we had said make
10 more explicit the reference to this provision in
11 the law, it's there. But basically it's what we
12 had asked you to do the last time.
13 MR. ROONEY: That's correct. We did
14 talk about this in the last discussion about the
15 statute referenced Public Law 93212 and trying to
16 clarify it, we then further clarified it from the
17 last discussion for what you see in what we
18 proposed for you for this discussion by clarifying
19 that we need competitive integrated employment.
20 MS. PODZIBA: Tom?
21 MR. AHART: Would it be possible for us

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1 to see that section of the rehabilitation act to
2 see the reference, maybe tomorrow?
3 MR. ROONEY: We'll provide that
4 tomorrow.
5 MS. PODZIBA: Lisa?
6 MS. MACK: I just had questions on Page
7 2. I'm just having trouble following. We go like
8 Line 4 is number two, but the next marking is on
9 Line 15, ii romanette.
10 I mean, is there like a number three
11 some place or like an i? I don't know if
12 something is missing or if I'm just missing
13 something.
14 MR. ROONEY: No, this is the funkiness
15 of regulations. So if you turn back to Page 1,
16 Line 37, Number 3 is the lead-in for all of this.
17 And then romanette i, indent Number 3,
18 and then romanette i you have A, which is on Line
19 41, which has a one and a two, are underlined, and
20 then you've got a B. So A and B are the same on a
21 level underneath romanette I. And then under B,

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1 on LIne 44, you've got a one, and then underlined.
2 Part B is the stem.
3 And then you go down to Line 15,
4 romanette two.
5 MS. MACK: Thank you.
6 MS. PODZIBA: So, it's 5:00 o'clock and
7 I just want to summarize where we are on Issue
8 Paper 4A.
9 Outstanding is on Page 2, paragraph 3,
10 which Kay is going to check on some questions
11 related to, we made some changes --
12 MR. RUELAS: If you can go back to the
13 three, where it says "students eligible for".
14 MS. PODZIBA: Right. That's the
15 question that Kay's going to take back.
16 MR. RUELAS: Ok. I just wanted to know
17 why we had changed the wording of that again. So
18 she's going to find that out.
19 MS. PODZIBA: Yeah. Kay will come back
20 on that.
21 I think there are also remaining

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1 questions about that whole paragraph, how that
2 gets broken out. So we'll come back to that.
3 There is a question on Page 3(2),
4 romanette i, about whether or not that's a place
5 to mention that parents get that information in a
6 language in which they can understand.
7 Similarly that question comes up on
8 Page 5 Number 3, paragraph 3, and then there is a
9 question about training that Mary Cathryn will get
10 back to us tomorrow, and then we'll pick up at
11 paragraph E, definition of student with
12 disabilities. Ok?
13 We're all on the same pages. So have a
14 nice evening.
15 Ron, did you have a comment before we
16 broke.
17 MR. HAGER: E is really 5B? E(1) is
18 the definition? Should we just -- are you going
19 to wrap that into 4B, or you just want to have it
20 separately here?
21 MR. ROONEY: So I do think we want to

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1 talk about it, so we can talk about it and then it

2 be a nice transition into 4B.

3 I appreciate everyone's patience today.

4 (Whereupon the meeting was adjourned

5 until Thursday, April 7, 2016, at 9:00 a.m.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, KIM M. BRANTLEY, the officer before whom

3 the foregoing meeting was taken, do hereby,

4 certify that the proceedings were taken by me in

5 stenotype and thereafter reduced to typewriting

6 under my direction; that said meeting is a true

7 record of the proceedings; that I am neither

8 counsel for, related to, nor employed by any of

9 the parties to the action in which this meeting

10 was taken; and, further, that I am not a relative

11 or employee of any counsel or attorney employed by

12 the parties hereto, nor financially or otherwise

13 interested in the outcome of this action. 14

15 KIM M. BRANTLEY

16 Notary Public in and for

17 the District of Columbia

18

19

20 My commission expires: October 31, 2019

21

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A

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