Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 7, 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 7, 2016 9:10 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 AQUEELHA JAMES

3 AARON PAYMENT

4 LESLIE HARPER

5 THOMAS AHART

6 DERRICK CHAU

7 ALVIN WILBANKS

8

9 ALSO PRESENT:

10 EXPERTS: PEGGY CARR, KENJI HAKUTA, MARTHA

11 THURLOW and KAREN MILES

12 and

13 JUDY BECKER, Technical Assistant

14 Office of the General Counsel

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1 MS. PODZIBA: Welcome back. I'm glad
2 to see you're all returning for day two of the
3 great slog.
4 I have one announcement. Kenneth
5 Bowen, from Office Depot, who is Kerri's
6 alternate, had to resign from the Committee, and
7 he did so in writing in accordance with the
8 protocols.
9 So, we'll just strike him from the
10 protocols and I'll send an updated version.
11 Nothing else changes except to remove him from the
12 membership. Ok, I just wanted everyone to know
13 about that.
14 That said, Patrick, I think we're ready
15 to pick up where we left off yesterday.
16 MR. ROONEY: Morning, everyone.
17 Welcome back. I know Thomas is in a cab I've been
18 told trying to get here through traffic. So
19 hopefully he will be here in a few minutes.
20 Do you know if Aqueelha is coming
21 today?

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1 MS. PODZIBA: I sent her an e-mail last
2 night but didn't hear back from her, and Audrey
3 and Mary Cathryn were in a cab... oh, and they
4 have arrived.
5 MR. ROONEY: So before we start I think
6 Aaron wanted to say a few words before we begin.
7 So I'll turn it over to Aaron.
8 (Aaron Payment says blessing in
9 Ojibwemowin language.)
10 MR. ROONEY: Thank you, Aaron.
11 So I have been asked to try to speak
12 more slowly today. I have a habit of speaking
13 fast, and when I'm nervous, I speak even faster.
14 Hopefully I will try to keep that in mind to help
15 our person taking the transcript.
16 MS. PODZIBA: And we'll try to keep you
17 from being nervous.
18 MR. ROONEY: Thank you. I appreciate
19 that. Everyone has been actually doing a good job
20 of that.
21 So, in front of your spots this

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1 morning, everyone had two pieces of paper that we
2 provided. The first was a request from Thomas for
3 the language of the Rehabilitation Act, which was
4 something we ended with yesterday. We talked
5 about a piece that relates to Issue Paper 4A, but
6 actually it's covered in 200.2 of the regulations
7 where we talked about the requirements for
8 alignment of alternate assessments based on
9 alternate achievement standards. So we wanted to
10 provide that in your binder.
11 The top part of that provides a
12 citation for where in the ESSA statute they talk
13 about the Rehabilitation Act, and you'll see that
14 on romanette I, Roman numeral V, where they
15 reference Public Law 93112. That's the
16 Rehabilitation Act, and then the text below it and
17 on to the second page is the actual purposes of
18 the Rehabilitation Act, which is what is being
19 referenced. So we wanted to derive that citation
20 so you could see the language there.
21 The second document that you had is

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1 something that we wanted to start the day today
2 discussing, and this was back from right into the
3 Issue Paper 4A. We left off, if you can remember,
4 with the very end of Issue Paper 4A, which was E,
5 Definitions Related to Students With Disabilities,
6 and --
7 Morning, Thomas. Sorry you got stuck
8 in traffic. Glad you made it through.
9 Number one is the definition of the
10 term students with the most significant cognitive
11 disabilities, and in the proposed text that we
12 gave you in advance of today, we had just put a
13 placeholder here for the subcommittee, and Ron was
14 helpful to provide the readout from the
15 subcommittee the other day. All of you are part
16 of that, and really that discussion, you were part
17 of that discussion. I think those principals you
18 came up with make a lot of sense to us, and we
19 certainly agree with those ideas with making sure
20 the right kids are included, a lot of states are
21 doing this well, and some states need assistance

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1 and we're talking about the needs of the child. I
2 think that the ideas and those principals very
3 much resonate with us as we're trying to think
4 about this definition and this term and what it
5 means and how we can help.
6 We did want to propose for the group's
7 consideration creating an actual definition for
8 this term. I know we talked about this a little
9 bit in session one, and we didn't have a
10 definition then, and the subcommittee didn't come
11 up with a specific definition, but we wanted to
12 propose this definition which we think is helpful,
13 particularly in light of the new requirement in
14 the ESSA that not more than one percent of kids at
15 the state level can be assessed on an alternate
16 assessment for students with the most significant
17 cognitive disabilities. And that new very real
18 limitation at the state level makes it more
19 necessary I think to provide some guidance to
20 states to make sure that they're providing good
21 support for their districts and schools and IEP

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1 teams to identify the right kids who need to take
2 the alternate assessment.
3 So we do have this definition coming up
4 a lot today and then I want to go further and have
5 discussion on this language.
6 This definition very much largely comes
7 from the work that the states have been doing
8 where they have designed new alternate assessments
9 that are in place right now. So we talked about
10 this in the last session, but there are two
11 consortiums for states: The National Center State
12 Collaborative, which is the NCST, or "nixit"
13 consortium and the Dynamic Learning Maps
14 consortium, groups of states that have been
15 designing.
16 New alternate assessments, and last
17 time we provided the specification guidelines that
18 each of those two groups defined. They got
19 togetehr and defined that criteria. It's in your
20 packet, again, which is Issue Paper 4A, so it's
21 there for you to look at if you want to see what

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1 they're definition was.

2 We have largely tried to take their

3 definition, and that is what you see in number one

4 on this draft page where we defined it as, "if

5 their disability significantly impacts their

6 intellectual functioning and adaptive behavior and

7 requires extensive direct individual instruction

8 and substantial supports". That language we

9 largely took from NCST and Dynamic Learning Maps.

10 The two bolds underneath that are also

11 taken from the two groups of states and their

12 definition for this, and that is really, not

13 trying to be prescriptive -- actually I think this

14 definition is trying not to be overly prescriptive

15 but provide more of a guide to states as to how

16 they would then operationalize this. Because I

17 think states would have some discretion within

18 that of how this would look within their states

19 and districts and schools and with IEP teams. But

20 being clear that in this definition in number one

21 and the two romanettes underneath it are referring

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1 to that, that it not be based on a student's
2 particular disability category in IDEA, and not be
3 based solely on a student not doing well on the
4 state assessments. So it would be related to the
5 student's disability and the impact that's
6 impairing the intellectual functioning and
7 adaptive behavior.
8 The term "adaptive behavior" in number
9 one, we felt like if we were going to use that
10 definition from NCST in our printouts from the
11 state, that it would be helpful to then clarify
12 what we mean by adaptive behavior.
13 So that is what number two had to do,
14 to define adaptive behavior. I won't read it just
15 purposes of time, but you can see it and it's all
16 in front of you.
17 That language actually comes from the
18 American Association on Intellectual and
19 Developmental Disabilities. We took their
20 definition for what an adaptive behavior means,
21 and you have that in your packets, in your

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1 binders. And it shows up in the supplemental
2 materials.
3 After the issue paper, you've got
4 Participation Guidelines for Alternate
5 Assessments, which shows the Dynamic Learning Maps
6 and the NCST participation guidelines, and then
7 the page behind the NCST participation guidelines
8 is the language we took from the American
9 Association on Intellectual and Developmental
10 Disabilities where they defined adaptive behavior.
11 So you can see how we tried to identify
12 what that would be, so we tried to provide a
13 little more clarity on the field.
14 So with that I'll stop and see if
15 anyone wants to provide discussion on that.
16 MS. PODZIBA: Ron?
17 MR. HAGER: I actually had a question
18 from yesterday afternoon. I don't know if you
19 want to do that now or just work on this and just
20 hold the other question I had. I wanted to make a
21 point.

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1 MS. PODZIBA: I'm going to go back,
2 because there was also a question about training
3 that we didn't finish yesterday.
4 MR. HAGER: You want to wait on this
5 and --
6 MS. PODZIBA: Let's start with this
7 definition, since Patrick has introduced it, and
8 before we leave 4A, we will get to whatever items
9 there are.
10 Liz?
11 MS. KING: Just as a general comment,
12 I'm more comfortable with the word "criteria" than
13 "definition," and I'm not sure of the right way --
14 and maybe this is a distinction without a
15 different for the purposes of the regulatory text,
16 but just wanted to make that general comment.
17 And then I had a specific edit within
18 the language of the criteria that you've offered
19 here. I wanted to add, in one it says "Section
20 602(3) of the IDEA that significantly impacts
21 intellectual functioning and is pervasive in

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1 nature and adaptive behavior and to require
2 extensive individualized instruction".
3 I'm just making sure that we're talking
4 about a disability which is pervasive in nature.
5 MS. PODZIBA: Day, do you want to
6 respond to the question of "definition" or
7 "criteria"? Does that matter? I don't know
8 where -- where would you put the term "criteria"?
9 MS. RIGLING: Yeah, if we're going to
10 put "criteria" then it seems like we have to
11 somehow link it more to a specific provision that
12 would then provide a criteria for.
13 I think a definition is more a
14 standalone part of a reg that then applies every
15 time that word is used.
16 I don't know that you can't have -- I
17 think you can't have a definition that is more
18 open-ended and that ends up being "criteria". I
19 mean, I guess I don't have a problem with the word
20 "definition".
21 MS. PODZIBA: Right, but it allows you

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1 to use that term throughout the regulation if it's
2 a definition?
3 MS. KING: Yeah, and it's not -- I
4 mean, I'm find either way. Yeah, I hear what
5 you're saying.
6 MS. RIGLING: Because I think
7 "definition" is a word that we have used
8 throughout these regs. There is a number of
9 places where at the end of the sections we have
10 "definition" that is related to those sections.
11 So I guess I would prefer to use
12 definition as long as we don't think that we're
13 creating sort of a substantive difference.
14 MS. PODZIBA: And is pervasive in
15 nature? Any response to that proposal?
16 Aaron, on that proposal.
17 MR. PAYMENT: So I'm wondering, as we
18 go about doing this, so I'm thinking, you know,
19 we're changing terms. I think there's probably
20 going to be support to match whatever language we
21 use to previous laws and provisions. So then when

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1 we come up with new terms, we have to think about
2 the pros and cons to the effect of it on the
3 ground, and what will the effect will the effect
4 be to the practitioners' in the room.
5 So I'm wondering, because my concern
6 is, by defining it, what I'd like to do is we're
7 trying to -- in my mind we're trying to eliminate
8 a little bit of wiggle room that some legal
9 districts will use not to provide the service.
10 On the other hand, I think states might
11 appreciate clarifying what it means, because then
12 it's just completely opposite that some are not
13 going to be able to advocate beyond what the law
14 actually said.
15 So I'm worried about using a term that,
16 if it's not consistent with previous provisions,
17 that might further limit it. And I think that the
18 jargon or the language of the profession might be
19 used regularly that says "is pervasive in nature,"
20 but I'm worried that that then could be used as a
21 way to say, Well, prove that it's pervasive.

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1 You know, if they have a significant
2 cognitive disability and it's been diagnosed, it
3 affects their intellectual functioning, why do we
4 need a modifier on that that may further limit by
5 having somebody have to demonstrate that?
6 So I think it might add more confusion
7 by saying pervasive in nature because now we got
8 to decide what that means on the ground, where
9 someone may say, Well, geeze, Johnny doesn't
10 exhibit that all the time. That's not pervasive
11 in nature.
12 So, if I could be convinced that that's
13 steeped in the literature and it's solid, it's got
14 peer review behind it, and we don't have to then
15 debate that on the ground, that's what I'm
16 concerned about.
17 And I think this is a good intro to any
18 time that we change language, because we have to
19 think about how it's going to be implemented when
20 it's on the ground..
21 MS. PODZIBA: So, Liz, I'm seeing a lot

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1 of nods in support of Aaron's concern about your
2 proposal.
3 MS. KING: I mean, it's part of the
4 learner characteristics used NCST. I think this
5 is a pretty consistently used word in the context
6 of talking about children with the most
7 significant cognitive responsibilities. From a
8 practitioner's perspective I think it is a
9 meaningful word, but I'm getting some greater
10 clarity about that.
11 MS. PODZIBA: So we'll move on to
12 another issue.
13 Rita?
14 MS. AHRENS: Sure. I'd like to propose
15 a safeguard to be put into romanette ii for the
16 identification of students with disabilities who
17 are English language learners.
18 We've seen overidentification of
19 students in some cases where parents have had to
20 actually go and hire private assessors to prove
21 that their children were of average intelligence

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1 so that they didn't have to take the alternate
2 assessments.
3 So I don't know what the language
4 should be, but I think it needs to be modified.
5 "Determinations of English learners
6 with the most significant cognitive disabilities
7 must be made in a way that are linguistically
8 valid and reliable".
9 MS. PODZIBA: Is there a response to
10 that proposal? Where does it go?
11 MS AHRENS: In romanette ii, and at the
12 end of romanette ii.
13 MS. PODZIBA: Could you read it out
14 again.
15 MS AHRENS: "Determinations of English
16 learners with the most significant cognitive
17 disabilities must be made in a way that is
18 linguistically valid and reliable".
19 MS. PODZIBA: Is there a response to
20 that? Some people are shaking their heads yes.
21 Tony?

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1 MR. EVERS: I have a procedural
2 question.
3 MS. PODZIBA: Ok, why don't you raise
4 that now.
5 MR. EVERS: Now I may have been asleep
6 at the switch, which occasionally happens, but I
7 don't remember the subcommittee's report
8 suggesting that we should have regulations around
9 this issue. So that's a concern of mine, how
10 procedurally the subcommittee doesn't make that
11 recommendation.
12 That aside, I mean, this is not my -- I
13 probably talked more about this operationalizing
14 how it's going to work, but I'm going to need time
15 to digest this and. If indeed we're going to
16 regulate this, which the subcommittee said
17 something about, I need some time on this.
18 MS. PODZIBA: Ok, so the subcommittee,
19 because time is no short, did what it was able to
20 do in the time that it had, so I think it's fair
21 to say this is a Department proposal, but I think

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1 it's fair to table it for now given that you've
2 just seen it.
3 So it sounds like --
4 Ron, do you have something?
5 MR. HAGER: I just wanted to say that,
6 the charge to the committee, was not to make a
7 decision one way or the other. It was to discuss.
8 And we discussed for, you know, two and a half
9 hours. But then we went beyond our charge by
10 coming up with these guiding principals. So my
11 reading of the charge was not that we would make a
12 decision one way or the other.
13 So in my view, in terms of the
14 procedural process, by our analysis and
15 discussion, setting up principals, we kind of
16 freed it to be of, you know -- freed the charge to
17 the subcommittee to then elevate it to like every
18 other provision we're discussing, you know, let's
19 look at the language and try and agree or
20 disagree, or modify it to reach consensus.
21 MS. PODZIBA: So procedurally often

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1 subcommittees are created to develop proposals for
2 the committee, and what happened was more a
3 summary of what happened. The subcommittee didn't
4 decide or come up with a recommendation to define
5 it or not, in all fairness. So I think, because
6 time was short, it comes back to the table with no
7 formal proposal about a definition, but rather
8 with the principals that emerged from the
9 discussion.
10 But I think it's fair to give everyone
11 a chance to be able to consider this definition
12 with their advisors.
13 So, Patrick, perhaps we set this aside
14 maybe 'till after lunch, and move on with the
15 other issues.
16 Does that --
17 MS. KING: I had a question. I'm not
18 sure why "is pervasive in nature" was taken out.
19 MS. PODZIBA: It's just. So I asked
20 that it just be stricken through so that it's
21 still there.

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1 Yeah, it's to be discussed. If it
2 wasn't stricken, it would look like it was there.
3 It's open. It's still an open discussion. It's
4 not done. If it was done, it would either be
5 there or not there.
6 So that's just to flag it as continuing
7 discussion.
8 We're off to a good start.
9 MR. ROONEY: Susan, so I agree with
10 that suggestion. I think it makes sense that the
11 people who have to think about this have a chance
12 to talk to their colleagues to consider what this
13 language might be and what their thoughts and
14 reactions might be.
15 I think one amendment to the suggestion
16 that Rita made that I'd like to put on the table
17 for all future and then going back and talking
18 with -- instead of adding that sentence, I
19 appreciate the point you're making, Rita. What if
20 we were to try to incorporate that in the sentence
21 before it where we say, "students with the most

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1 significant cognitive disabilities must not be
2 identified based solely on a student's previous
3 lack of achievement or status as an English
4 language learner or the student's previous need
5 for accommodation".
6 So you get that point? I think my
7 concern with the sentence you added is how a state
8 would operationalize determining the linguistic
9 and cultural validity and reliability. I think
10 that would be a challenge for them to think about
11 how to do that, so I'm trying to think about other
12 ways to try to put that safeguard in that you're
13 looking for without quite using those exact words.
14 So that would be my quick suggestion on
15 that for your considerations.
16 And I'm happy to -- we can table that.
17 MS. PODZIBA: Yeah, let's -- maybe,
18 Rita, you can think about that off line, and we're
19 going to table this for now.
20 So were cards up for this issue or for
21 something else?

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1 Lynn?

2 MS. GOSS: Something else.

3 MS. PODZIBA: Do you want to hold off?

4 MS. GOSS: Can I just put it out in the

5 room?

6 MS. PODZIBA: Sure, let's do that.

7 MS. GOSS: When looking at the

8 definition here, just keep in mind that it is the

9 IEP team that determines their eligibility, so

10 maybe there is a place that the IEP team should be

11 listed in this definition.

12 MS. PODZIBA: Kerri, did you have

13 another comment, just to put on the table for now?

14 MS. BRIGGS: I think Patrick actually

15 came up with a better solution. I was going to

16 suggest that we put Rita's sentence as a

17 separate -- like number romanette iii. But I like

18 Patrick's suggestion better.

19 MS. PODZIBA: Patrick?

20 MR. ROONEY: Just a comment on Lynn's

21 suggestion...

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1 Keep in mind that you have to look at
2 this definition, if we were to agree to it and
3 accept it or change it, however, if a definition
4 ends up being in there, that this then fits in
5 with 200.6. And earlier there is a reference to
6 the IEP team as the one that makes the decisions
7 about the student's placement, for these students.
8 So this fits under wherever we talked
9 about students with the most significant cognitive
10 disabilities and where IEP teams make decisions
11 about how to assess them and how to provide
12 accommodations for them, it would then be
13 referring to this definition.
14 So I don't know that you need the
15 reference IEP team in that definition, because
16 it's in the reg where they identified how to
17 identify the needs of those kids on alternate
18 assessments.
19 MS. GOSS: Thanks. It's just it's out
20 of context.
21 MR. ROONEY: I agree. It's hard to

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1 look at these pieces in isolation, then you miss
2 the function.
3 MS. PODZIBA: So I want to go back to
4 any other items on 4A, and when we broke, Mary
5 Cathryn, you were looking for a place for a
6 training.
7 So did you have some time to come up
8 with something?
9 MS. RICKER: I did, yes. Thank you.
10 Our suggestion is on Page 3 of Issue
11 Paper 4A, what I believe is romanette ii, and then
12 the language is nine, where it says "ensure that
13 general and special education teachers" insert
14 there "also including paraprofessionals, and other
15 support staff," and then insert "received training
16 on administering the alternative assessments,"
17 and -- and then continue the rest... "know how to
18 continue assessments including alternate
19 assessments".
20 Because it didn't look like the other
21 language and intent that was struck out on Page 6,

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1 the gist of that did get included on Page 3,
2 except for the training portion. So that's the
3 only thing we inserted under Page 3, and then we
4 inserted "paraprofessionals" as well, given the
5 role they played in assisting general and special
6 education students delivering adaptation systems.
7 MS. PODZIBA: Regina?
8 MS. GOINGS: Thank you.
9 Mary Cathryn, I appreciate that. I
10 just wanted to do a little bit of tweaking of the
11 terminology that you used with the
12 paraprofessionals, as we give specialized
13 instructional support personnel and other
14 services, instead of what you were referring to,
15 "other related services personnel".
16 MS. PODZIBA: So it would read
17 "including paraprofessionals and..." and can you
18 repeat that?
19 MS. GOINGS: It would read "specialized
20 instructional support personnel and
21 paraprofessionals," which would include

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1 psychologists, speech pathologists, OTTs, et
2 cetera.
3 MS. PODZIBA: Day, do you have a
4 comment?
5 MS. RIGLING: I just was wondering if
6 we could edit the piece so it would say take
7 training to know how to administer. It seems like
8 there's too many "administers" in there, just
9 shortening it a little bit.
10 I don't actually care for the phrase
11 "know how," but I know that's statutory, so it
12 probably would be nice to keep it.
13 MS. PODZIBA: Is that it?
14 MR. HAGER: No.
15 MS. PODZIBA: "Received training to
16 know how".
17 Richard?
18 MR. POHLMAN: I have a question about
19 whether the intent here is to ensure that all
20 general education teachers, because we're talking
21 about the assessment for students assessed under

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1 the alternate assessment.

2 Is it possible to make it clear that

3 it's only necessary general and special education

4 teachers? Because not everyone in a building, for

5 instance, interacts with students on all levels.

6 So I'm wondering if there is a way to

7 narrow this and get clear that the expectation may

8 not be that every general educator a going to

9 understand and know how to administer the

10 alternate assessment.

11 Just as we're looking at precious

12 personal development time, I'm wondering if there

13 is away we can narrow this expectation, and it

14 will likely happen on the ground. So maybe this

15 is something a we will narrow as we get closer to

16 the limitation, but I think this is something we

17 could also address here.

18 MS. PODZIBA: Mary Cathryn?

19 MS. RICKER: Thank you.

20 I would say, because the language had

21 already listed "administering assessments" without

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1 the qualifier "alternate" and list them as two
2 distinct things, because it says "administer
3 assessments, including alternate assessments".
4 I do believe that you are absolutely
5 correct that practically it will be the people
6 most involved and most responsible for
7 administering any assessments, including alternate
8 assessments.
9 I would prefer to keep it as this,
10 though, because there are those two distinct
11 listings of assessments and alternate assessments.
12 MR. POHLMAN: Sorry I'm struggling again
13 back with the whole idea of trying to put all of
14 this together here.
15 MS. PODZIBA: Patrick?
16 MR. ROONEY: We have a proposal that
17 may address Rich's point and also satisfy Mary
18 Cathryn, which would be to say, "receive necessary
19 training." So that provides a qualifier that when
20 it gets operationalized, then the school would
21 have the discretion to determine who needs the

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1 training and what training they need to know how
2 to administer the assessments, that it provides a
3 little more wiggle room.
4 MS. RIGLING: And maybe move that to
5 after ensure. "Ensure," comma, "provide necessary
6 training" --
7 MS. JAMES: No.
8 MS. RIGLING: -- "general education
9 that teachers know how"?
10 MS. PODZIBA: They're not liking that.
11 MS. RICKER: Too many clauses.
12 MS. PODZIBA: "Necessary," is that
13 alright with you?
14 MS. RICKER: I actually don't like
15 "necessary". The word "necessary" is a powerful
16 tool for educators.
17 MS. PODZIBA: Ron, on this issue.
18 MR. HAGER: Yes. On the two at the
19 end, I think it's two separate issues and the
20 statute does include "know".
21 So I don't say "training to know".

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1 It's "training and know". I think it's inelegant.
2 I think you have to keep it consistent with the
3 statute.
4 So it's "training and know". That's
5 how I would propose it because of the statutory
6 language. You don't want to take out the "and"
7 when you are editing the training.
8 MR. ROONEY: Isn't it "training to know
9 how to administer"? It's not other training,
10 right?
11 MS. RICKER: I would say that, I mean,
12 in both for our English language teachers and our
13 general education and our special education
14 teachers, when there is an assessment for an
15 accomodation for students, that it is both
16 training on the assessment itself; what is the
17 assessment, what are we measuring, you know, all
18 the things you need to know the assessment will do
19 for you or won't do for you.
20 And then there is training on
21 administering the actual assessment. Usually it

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1 should be, in best practice, it should happen in
2 impact order. First you learn about the
3 assessment, and then you learn how to use the
4 assessment -- and you learn how to administer the
5 assessment and then how to use the assessment.
6 So those are the two distinct training
7 opportunities.
8 MR. HAGER: Can you see it?
9 MS. PODZIBA: What Judy just put up is
10 "training to administer assessments" and "know how
11 to administer assessments".
12 MS. RICKER: Which is what we have.
13 MS. PODZIBA: Leslie, is your comment
14 on this item?
15 MS. HARPER: Yes. I was going to
16 state, coming from a small rural school district,
17 everybody in the school needs to know how to
18 administer all of the assessments.
19 Coming from experience in both the IEP
20 title schools, which I have years of experience
21 in, and in our Tribal Ed Department working with

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1 the eight public schools that are in border towns
2 of our reservation, in administering the
3 assessment, we're short-staffed. Any given
4 testing day anybody is called out to test any
5 student.
6 We know it's best practice to have the
7 kids familiar with who is testing them. We know
8 all this, but ten years, small rural school
9 districts, everybody is pulled out to administer
10 the test, whether you're you a specialized
11 professional or not. It happens.
12 So I mean, we've had to institute all
13 staff training on all aspects of the training
14 assessments, you know. So I mean, it's important.
15 MR. POHLMAN: I think we're talking
16 about -- for my school it's four hundred kids. My
17 point is when we're talking about alternate
18 assessment trainings to have a requirement that
19 every generalized training on that is perhaps a
20 bit excessive. Again I believe it will be handled
21 in the field. But I think that having an

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1 overactive state office that may come in and
2 demand and see training materials for all general
3 educators to create a program for monitoring.
4 MS. PODZIBA: I think the fix was
5 "necessary".
6 Leslie, does that work for you, "the
7 necessary training"?
8 MS. HARPER: Sure.
9 MS. PODZIBA: Derrick.
10 MR. CHAU: I was just wondering if the
11 necessary clause might not be attached to the
12 clause under alternate assessments, under
13 paragraph C and par C3(b), because that might
14 directly address Richard's concern about the
15 alternate assessments in the necessary training
16 rather than all necessary training.
17 But I don't know, it was just an idea,
18 and I think I'm looking at it now and maybe the
19 "necessary training" as proposed might be better.
20 MR. ROONEY: Sorry, Derrick. You mean
21 that after "including as necessary alternate

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1 assessments". I think -- yeah. We're getting to
2 the "necessary" spot so people can see what you're
3 saying.
4 MR. CHAU: I don't know. I mean, I'm
5 open to either. I don't know if there is an
6 implication of putting it in one place or the
7 other, but it seems like Richard's point was more
8 focused on the alternate assessments rather than
9 the other assessments. The rest of the sentence
10 is "applicable for all" --
11 MS. PODZIBA: Ok. Perhaps we can let
12 the Department, when they scrub the language,
13 figure out the better place. I think conceptually
14 we all agree that the "necessary training" needs
15 to be defined.
16 MR. HAGER: I had a reaction. Actually
17 this is partly because we're kind of jumping in
18 the middle. This is part of B, not C. So this is
19 for all assessments, not just the alternate.
20 So the goal here is to have the
21 training and know how to minimize a need for the

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1 alternate assessment. So we don't want to have
2 the training qualifier up. Just the alternate.
3 It's on all of them.
4 So I think that, just in terms of the
5 Department cleaning up the language, just keep in
6 mind this is B, not C. So it's really all the
7 assessments, not just the alternate assessment.
8 MR. ROONEY: I think the word
9 "necessary" here could be in both places and it
10 would not be duplicative.
11 To Mary Cathryn's point, the necessary
12 training, whoever is giving the testees, and then
13 as necessary alternate assessment, to Richard's
14 point, is probably not going to be all of the
15 staff in the school, maybe a subset of the staff.
16 I mean, I think we're Agnostic and
17 people have suggestions, keeping in both places
18 may not necessarily be duplicative.
19 MS. PODZIBA: Aaron?
20 MR. PAYMENT: So, I think that the
21 term, "and other appropriate staff," covers who

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1 would be needed to be trained in order to
2 administer, because it says "other appropriate
3 staff". And I don't argue with concluding about
4 the professional specialized support personnel,
5 because I think the reason why we're advocating to
6 include that is because the "alternate staff" is
7 unclear.
8 But this does allow for small schools
9 and whoever needs to be trained, and the school
10 does have to decide that.
11 MS. PODZIBA: Alvin, do you have a
12 comment?
13 MR. WILBANKS: I was just going to say
14 what he said. I agree with that. That the staff
15 includes whoever needs to train or whoever needs
16 to be involved. It could be everybody. It could
17 be five, ten people.
18 MS. PODZIBA: Thomas?
19 MR. AHART: I don't want to be coming
20 across as a minimalist here, but I was curious, if
21 we had "training," what does "ensure" mean?

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1 I'm just wondering if you ensure that
2 people know things, how do we do that absent the
3 training?
4 MS. PODZIBA: Mary Cathryn, do you want
5 to respond?
6 MS. RICKER: Sure.
7 There are a couple of different ways of
8 ensuring that teachers and paraprofessionals get
9 what they have a right to have. First is
10 educating them that they have a right to this sort
11 of training, and making sure that they work in
12 their districts to get that.
13 Because the state, because it starts
14 with "the state must ensure" this, the first place
15 of responsibility is for the state to determine
16 how they're going to share that information with
17 school districts that paraprofessionals and other
18 licensed educators get this training.
19 The second would be for the people who
20 are the direct advocates of our students, and that
21 is if a new test is brought to me to make sure

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1 that I know I have a right to expect some adequate
2 training.
3 MS. PODZIBA: Tom, you look a little
4 puzzled.
5 MR. AHART: Perhaps my question wasn't
6 clear enough.
7 It seems self-evident that training
8 needs to happen for the right people to know what
9 it is they need to do.
10 I'm curious, if I go through the regs
11 and every time the word "ensure" appears, that has
12 to be clearly defined if we're going to make this
13 an awful lot longer.
14 MS. PODZIBA: Ron, can you answer that?
15 MR. HAGER: Well, the context was there
16 was language later on that was eliminated because
17 it was duplicative, and Mary Cathryn's point was
18 that the phrase "training" was eliminated in that
19 phrase, so that phrase that they took out is
20 duplicative. Technically it wasn't duplicative
21 because it wasn't reflected in this.

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1 So I think what Mary Cathryn's proposal
2 is trying to do is take that phrase that was
3 crossed out as duplicative and make it clear that,
4 we mistakenly crossed it out and it's not
5 duplicative.
6 I'm speaking for you, Mary Cathryn.
7 You may want to respond, too. I think that was
8 your point.
9 MS. RICKER: Yes.
10 MS. PODZIBA: Lynn?
11 MS. GOSS: Just to listing who gets the
12 training. Throughout ESSA it does list the
13 teachers, the paraprofessionals, in that list, and
14 that's been common throughout that it's listed in
15 that manner.
16 So this is just putting it in line with
17 what other sentences in the law say.
18 MS. PODZIBA: Thank you.
19 Ron, did you have another issue?
20 MR. HAGER: I did.
21 MS. PODZIBA: In 4A?

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1 MR. HAGER: Thanks.

2 And actually this was Thomas' point

3 yesterday at the end of the day. It's on Page

4 5D(1) in the middle of the page, where he had

5 proposed adding in "as required under" -- listed a

6 specific provision of IDEA, and he put it in kind

7 of the middle of that paragraph.

8 So I think what he had said was,

9 "established monitoring rules and clear

10 appropriate guidelines as required by IDEA Section

11 612 A 16(c)". Did you find it there? Yeah.

12 So anyway, I did actually look at the

13 statute last night, and it's good I think to have

14 the coordination between ESSA and IDEA. The

15 problem is that provision doesn't really -- that

16 provision says nothing about monitoring. So I

17 think instead of having it where you proposed to

18 put it, so you have "established and monitored as

19 required by IDEA," that probably would be better

20 to just put it in the end, "in coordination with

21 the requirements of," you know, the same statutory

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1 reference.

2 So just putting it in a different spot

3 in that paragraph, and making sure it's

4 coordinating with the requirements of IDEA...

5 Because they don't really fully align, so we want

6 that kind of coordination, but just technically

7 how it was phrased doesn't quite fit with what the

8 provision is.

9 MS. PODZIBA: Tom, does that work for

10 you?

11 MR. AHART: My suggestion was to modify

12 the "guidelines" statement, "appropriate

13 guidelines," so that it's tied on there instead of

14 implying that there's two different sets that need

15 to be addressed.

16 MS. PODZIBA: Ron?

17 MR. HAGER: The other point is that if

18 we look at that provision of IDEA, it doesn't

19 refer -- it's different guidelines all together.

20 There's no mention in that provision of IDEA of

21 "most significant cognitive disability". There's

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1 no mention of the one-percent cap.

2 So you've got guidelines under IDEA

3 that cover just who makes the decision, and

4 there's guidelines under IDEA, but the guidelines

5 under IDEA don't jibe with the guidelines under

6 ESSA. So you really have to read the two

7 together.

8 And so, again, that's why I think it's

9 better to put in not there, because even the

10 guidelines are different, but just put in the

11 coordination with it. I think that's the most

12 important point.

13 MS. PODZIBA: Tom?

14 MR. AHART: So, what I'm trying to

15 avoid is having two different sets of guidelines.

16 So if there's ESSA requirements that go beyond the

17 IDEA, perhaps those could be specified in addition

18 to what's already in IDEA.

19 MR. HAGER: Yeah, I think that's what

20 we're doing here. In other words, we're trying to

21 flesh out in the ESSA regulations the provisions

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1 that are not covered by IDEA.

2 So, but by having -- I can attribute

3 this to a more technical legal brain freeze thing

4 I'm having, but by saying "guidelines as required

5 by IDEA" it's also required by ESSA.

6 The mean, the goal would be -- so I

7 think my proposal would cover that, because we

8 want to have the two sets of guidelines aligned,

9 but they don't necessarily require the same thing.

10 So we want to align them.

11 So that's why I'm saying coordination

12 with the requirements of IDEA helps us to make

13 that alignment.

14 MS. PODZIBA: Aaron, is your point on

15 this item?

16 MR. PAYMENT: Yeah, I'm trying to think

17 of the right word. I was thinking "in

18 coordination with" or "consistent with".

19 Consistent with might not be -- there's

20 an issue, but it might actually be worse, because

21 it suggests they have to be lined up and then it's

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1 the intersection that has to be looked at.

2 Maybe it will be notwithstanding the

3 requirements of IDEA, because it has to be done

4 here, and whatever requirements are under IDEA has

5 to be then too.

6 I'm not an attorney. This

7 "notwithstanding," that means that all those other

8 ones apply too.

9 MS. PODZIBA: Let's see. Kay, could

10 you help us out here? In order to get this

11 aligned, what would be the best way to frame it?

12 MS. RIGLING: I mean, are we trying to

13 say that they must include in here guidelines

14 under IDEA, these two points?

15 MR. PAYMENT: I think the crux is that,

16 because sometimes when people are looking at

17 compliance, they read things in absentia.

18 So I think what we're trying to say is

19 that we want all the provisions in this law and

20 other applicable laws to apply. And so I think

21 where we got this point was we wanted to reference

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1 the other applicable laws.

2 So I, as an advocate, I want every law

3 to apply, and to be clear, the states that can't

4 read one law and not consider all the other

5 related laws.

6 MS. RIGLING: I mean, isn't the point

7 that we want one set of guidelines to govern IEP

8 teams, whether we're talking about students with

9 disabilities or students with the most significant

10 cognitive disabilities, and that these are

11 additional requirements to these guidelines?

12 They're not new guidelines, or they're

13 not a separate set of guidelines. They're part of

14 the IDEA guidelines.

15 Isn't that really what we're trying to

16 do here is just make sure that it's one set of

17 guidelines that has these additional components?

18 MS. PODZIBA: Yes, so how do we do

19 that?

20 MR. ROONEY: I think the way this is

21 written now to say, number one, that the

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1 established guidelines for IEP teams, and the
2 monitoring and modification of those guidelines,
3 and those guidelines for identifying who has the
4 most significant cognitive disabilities that are
5 taking alternate assessments, should be then in
6 coordination with the requirements of IDEA.
7 So It's saying, You've got the
8 guideline letter IDEA. You should make sure when
9 you establish these guidelines, which are now in
10 the statute in the text, that it's now consistent
11 or coordinated with those other guidelines, so it
12 becomes one set.
13 Does that satisfy your concern, Thomas,
14 or are you still worried about the language?
15 MS. PODZIBA: Thomas?
16 MR. AHART: I guess I'm unclear as to
17 whether there are going to be two sets -- whether
18 the intent is for there to be two sets of
19 guidelines or one.
20 And I also felt compelled to mention,
21 since many others are, I also consider myself an

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1 advocate.

2 MS. PODZIBA: Patrick?

3 MR. ROONEY: I mean, I think the first

4 word in number one is "establish". So this

5 section is you have to establish guidelines for

6 who should take the alternate assessment, right?

7 That is not in the IDEA regs. That is being made

8 right here.

9 And then I think Ron's suggestion is

10 trying to then marry your point, which is they

11 should not be this connected thing to what is

12 happening with the guidelines in the IDEA, or

13 states should be coordinating those things, so it

14 ends up becoming one set of guidelines, but part

15 of it is in the IDEA and part of it is here.

16 I guess the question is whether you

17 think this does that or not. But I do think that

18 this number has the word "establish" in it, which

19 makes it clear that they're saying there is

20 something else states now need to do.

21 It's actually something they're already

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1 doing because they already have alternate
2 assessments, so they're putting in this fact.
3 They're putting it in this regulation.
4 MS. PODZIBA: Thomas.
5 MR. AHART: I guess it would be that
6 our states are in a position to actually provide
7 guidance can be clear. So on the ground we
8 actually can do the right thing by the kids and
9 actually follow the regs.
10 And if it sounds like two different
11 sets, then probably at the same level we're going
12 to feel like we have two parallel sets of regs
13 that we're trying to follow when we're
14 implementing these regs.
15 So that's a recipe for inadvertent
16 noncompliance.
17 MS. PODZIBA: Ron?
18 MR. HAGER: Yeah, that's why I chose
19 "coordinate with" instead of "notwithstanding".
20 Because if you use the phrase "notwithstanding,"
21 that implies you have two different sets of

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1 criteria.

2 What I'm suggesting is, by having the

3 phrase "coordination with," that you're setting up

4 guidelines, and as you're setting those guidelines

5 up, you're considering both requirements and not

6 have to duplicate.

7 So I think Thomas' point was that. So

8 I'm trying to phrase it in a way that reaches

9 Thomas' point in not having two sets of

10 guidelines, and I think that's the best way to do

11 it.

12 MS. RIGLING: What if we put after

13 "one," "establish, consistent with the

14 requirements of IDEA Section 612A 16C, and

15 monitoring limitation of clear," maybe comma after

16 "of, clear and appropriate guidelines"?

17 MS. PODZIBA: I think that gets to your

18 point earlier, Ron, that it wasn't on the

19 "monitor," it was on the "guidelines".

20 MR. HAGER: And also "as required by

21 IDEA and consistent with IDEA". And maybe we can

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1 think about it and that might work.

2 MS. PODZIBA: Aaron?

3 MR. PAYMENT: I think that does it.

4 Yeah, I think that "consistent with" does it.

5 You don't have to say "coordinate".

6 That's kind of an ambiguous term for states.

7 "Consistent with" means it has to line up with the

8 IDEA.

9 MS. PODZIBA: Ok. I think we're good

10 on this one.

11 Other items on 4A?

12 Aaron?

13 Alright.

14 MR. RUELAS: Before you leave it.

15 MS. PODZIBA: We were just about to

16 leave it, so, yeah, Ryan.

17 MR. RUELAS: So I had a clarifying

18 question from yesterday in regards to Page 2 at

19 the very beginning, and area three, where we

20 changed a word to "entitled" versus "eligible,"

21 and I still am curious about why we did that.

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1 MS. PODZIBA: Ok, that was something
2 that Kay was going to look into.
3 Kay, have you had a chance to do that?
4 MS. RIGLING: We have not.
5 MS. PODZIBA: So that's still in play.
6 MR. RUELAS: Ok.
7 MS. PODZIBA: Alright. We'll wait
8 until we get a legal interpretation on that.
9 Liz, did you want to make a comment on
10 that?
11 MS. KING: Yeah, I wanted to offer the
12 rationale.
13 So there are two pieces. One, I like
14 the one Audrey added yesterday which is there are
15 children who are eligible for things that they are
16 not entitled to. In order to get IDEA
17 accommodations, right, you have to go through the
18 legal process of, then at the end of that you are
19 entitled to those accommodations in a way that a
20 child who, if they went through the process would
21 be entitled, is not entitled until they go through

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1 the process. They're just eligible.

2 So that was Audrey's point.

3 The point I was making on this one

4 yesterday is just the distinction between like an

5 accommodation which would be convenient and would

6 be helpful, versus that which is legally required,

7 because making clear that this is only covering

8 those accommodations which are legally required

9 under, whether it's IDEA or 504, or Title VI, or

10 some other existing civil rights law that requires

11 that it be provided, is different than just

12 eligible for like a child who would better be able

13 to demonstrate if they had more time. Maybe

14 they're eligible but they're not entitled. They

15 don't have that legal requirement attached to

16 them.

17 MS. PODZIBA: What I'd like to do is

18 hold off the discussion on this until we have a

19 legal opinion about it, because we may be -- I

20 think that just frames the discussion that we're

21 going to have.

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1 So all of that paragraph three will
2 come to us for further discussion.
3 So, on 4A we're going to hold off on
4 paragraph E at the bottom of Page 6. So we'll
5 come back to that some time after lunch, after
6 everyone's had a chance to really review the
7 proposed definition.
8 So, Patrick, I think that makes us
9 ready to go to 4B.
10 MR. ROONEY: Ok. 4B. I imagine we'll
11 have a good discussion on 4B.
12 So, before I begin, I'll do a little
13 bit of an overview. I will point out that some of
14 the language in Issue Paper 4B has been covered
15 previously, so, we won't actually have to talk
16 about all those languages that are in here. We
17 can just take the first page and a half or so.
18 But 4B, and I just want to step back a
19 little bit and remind us of the discussion we had
20 two weeks ago when we started this, this is about
21 the requirement that's in the ESSA that states may

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1 not assess more than one percent of kids on the
2 alternate assessment based on alternate
3 achievement standards for students with the most
4 significant cognitive disabilities. And that's
5 the last time I'm going to say that big long term,
6 alternate assessments, for the purpose of clarity,
7 but that's what I mean when I say that.
8 This is a pretty significant change
9 from No Child Left Behind to the Every Student
10 Succeeds Act. Under No Child Left Behind, the cap
11 was states could assess as many students as they
12 determined necessary to take an alternate
13 assessment, but there was a cap on the
14 accountability side on the percentage of kids who
15 could be counted as proficient in the state's
16 accountability system.
17 Under ESSA, the language has now made a
18 significant change on that. So it's no longer on
19 the accountability side. It's on the actual
20 percentage of kids who may be assessed by an
21 alternate assessment. And there's now a

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1 requirement that states may not assess more than
2 one percent of students on the alternate
3 assessment.
4 Districts do not have that. We'll talk
5 about that in a bit, but this is done at the state
6 level.
7 And I think what makes this
8 particularly important for us to discuss is that
9 we talked about this last time, and I think you
10 have the data that we gave you data the last time
11 on the range of states and where they fall and how
12 many are testing more than one percent currently,
13 which obviously they can do and they've been doing
14 because there wasn't a cap on how many districts
15 were tested.
16 But currently a lot of states are over
17 one percent, and this will have to be a change in
18 their processes or a repeater -- something will
19 have to change in order for them to get under one
20 percent of children being assessed.
21 We spent a fair bit of time in the last

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1 discussion talking about one percent and whether
2 that was the right number and where that came
3 from. I'd like the committee to not spend a lot
4 of time on that. I think Congress was very clear
5 that one percent is the cap now. That's written
6 into the statute. I think there was research
7 behind that when we came up with the regulations
8 back in 2002, and I think there's competing
9 research about what the right percentage was. It
10 was one percent in the regulations. Now it's in
11 the statute. So now it is a cap that is in the
12 law for us.
13 I think why it's important to have this
14 conversation is, you know, the Secretary -- it
15 clearly has been found the Secretary has the
16 authority to waive this aspect of the statute if
17 he or she deems that necessary. But we take that
18 cap very seriously in that that waivers should be
19 provided to states when there's a rare
20 circumstance or where there's a clear
21 justification for that, and we want to make sure

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1 that all students are being appropriately assessed
2 and that people are making the best assessment for
3 individual students on the assessment that makes
4 sense for them. And then we think that Congress
5 thinks the statute should be less than one percent
6 for students on the alternate assessment.
7 We talked a little bit yesterday about
8 in general how the field has made significant
9 changes in the assessments in order to follow the
10 principals of Universal Design for Learning and
11 use computer-based testing and providing
12 accessibility features that can provide more
13 accessible tests and more accommodated tests that
14 more students should be able to take the assessed,
15 the general assessment and with accommodations, if
16 necessary.
17 So, because of that, you know, we're
18 trying to figure out the best way to focus on this
19 requirement in the statute that states not exceed
20 one percent of students taking the alternate
21 assessment, and taking into account this idea that

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1 the Secretary, you know, is supposed to be a
2 reference that has the authority to waive that
3 cap.
4 We think it's helpful to states and to
5 the field and to the public to be clear about what
6 those requirements are what those circumstances
7 are that the Department should take into account
8 when considering whether a state can exceed that
9 one-percent cap.
10 So we can talk through the language. I
11 just wanted to set that context up that, because
12 of the unique nature of this aspect of the law, we
13 do think it's helpful for us to clarify what the
14 expectations are for a state to therefore be
15 excluded where they think they need to exceed the
16 one-percent cap and they weren't going to ask for
17 that.
18 So, there are a lot of great things on
19 this issue paper in particular, and I wanted help
20 try to provide some of the frame and the context
21 for why they think that is necessary and

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1 appropriate in this case so there is clarity in
2 the field on what are the expectations the state
3 is going to come in and ask for a waiver and that
4 an elected department is going to consider, so
5 it's clear to each individual state, it's clear in
6 the systems across states, and it's clear to the
7 field in what the expectations are that, if the
8 situation were to come to pass, that state would
9 need to meet if it exceeds one percent.
10 So, based on that, I want to walk
11 through all the text and then maybe during the
12 discussion we can break it into pieces in order
13 for us to try to dig into this. But I do want to
14 walk through all of it together.
15 So, I think for our purposes in the
16 discussion here, starting on Page 3 of the issue
17 paper, about halfway down with Number 2 is the
18 first piece you have not seen before. The pieces
19 above it we talked about under the previous issue
20 paper. So this is the first part that talks about
21 the requirements for the alternate assessment.

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1 MS. PODZIBA: On Page 2 or 3?

2 MR. ROONEY: Sorry, on Page 3. Thank

3 you for that clarification.

4 First, you can see that the language

5 tries to be consistent with what we showed you

6 last time in Issue Paper Six about the full

7 package of the regulation that the cap is not at

8 the interval that districts may exceed one

9 percent. But if they are to exceed one percent,

10 then they have to provide justification to the

11 state.

12 We added at the bottom of Page 3,

13 romanette ii, language in red that describes some

14 examples of reasons that a district may need to

15 exceed one percent. These are not designed to be

16 prescriptive. They're not designed to be

17 exhaustive. We talked a little about these

18 examples in the last session as things that may

19 cause a district to exceed one percent. But, you

20 know, I'm sure we can come up with better ideas if

21 possible. I don't think it's helpful in the

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1 regulation to try to be exhaustive. I don't think
2 you could do that. I don't think it's necessary,
3 but I do think it's necessary to clarify some
4 possible scenarios in which a district may exceed
5 one percent.
6 Now, I'll point out that this language
7 here we actually copied from a different part of
8 the regulation. So in the regulations where we
9 defined "after yearly progress" for the
10 accountability systems in our current regs are now
11 no longer necessary because that accountability
12 first changed when we had the cap of one percent
13 in the current regulations, and states felt it
14 would be sufficient if we included this language
15 if districts were going to be asked to exceed one
16 percent of kids to be proficient in English
17 language assessments that would be given by the
18 state. We copied that reg from 200.16 and moved
19 it to 200.6, so these examples now apply in this
20 scenario. So that's where those came from. I
21 just wanted to put that content out there for you.

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1 Second, if you look there on Page 4 and
2 5 -- actually, sorry, romanette iii on the top of
3 Page 4, I think Thomas had the suggestion the last
4 time to clarify the language and the statute. The
5 bold blue you can see there -- oh, no.
6 Yes, sorry, in romanette iii, the
7 statute talked about all LEAs that submitted --
8 all LEAs that exceed one percent, then the state
9 has to provide oversight of those LEAs. The
10 previous language wasn't exactly what the statute
11 had, and so Thomas suggested that we go back and
12 clarify this, that it's all districts that exceed
13 one percent that the state should be providing
14 oversight. So we clarified that in romanette iii.
15 And then Number 4 is where we get into
16 the requirements for the state cap. I'm going to
17 walk through it as a piece, and then we can pull
18 it apart and people can ask questions, or people
19 can discuss the different sections of it.
20 First, because this is a waiver, and
21 typically the way a waiver should work is that it

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1 be prospective that if a state identified its need
2 to waive something in the law and then come in and
3 ask for something to be waived and the Department
4 approve that waiver before it makes that change in
5 the system, we ask that -- we think this needs to
6 be prospective.
7 We think states need to identify that
8 they will be exceeding the one percent and then
9 come in with the request before they give them the
10 test and determine whether to grant the waiver.
11 So you can see romanette i that we
12 require that the state submit the waiver request
13 at least ninety days prior to the start of the
14 state's testing window.
15 I will say there is a slight disconnect
16 here with the waiver provisions in general in the
17 statute in the ESSA that says the Department has
18 one hundred and twenty days to act on a waiver
19 request.
20 I think the reason we use ninety days
21 here, and we are open to discussion on this, is

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1 just kind of thinking about the timing of when the
2 state may have the data to know it needs to exceed
3 one percent, and submitting that to us, that tries
4 to give some flexibility for states to get that
5 data in time to submit it, but then also giving us
6 enough time review that request and make a
7 decision before the assessment can be developed.
8 So that is what we're trying to balance in
9 romanette i.
10 And then there are three pieces behind
11 that of what are included in the state's request,
12 and I'm going to take each of them separately.
13 They're following in the paper, each of
14 the romanettes is a different aspect of the
15 application. So romanette ii is about including
16 data. So the state should be able to provide data
17 in the previous year, looking backwards, about the
18 need to exceed one percent. So they should be
19 looking to identify that there is not a
20 disproportional number of kids taking the
21 alternate assessment, and the language references

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1 are in the ESSA, the statute. 1111C A, B and D
2 reference the subgroups, major racial and ethnic
3 groups in the state, English learning status and
4 socioeconomic status. The only one that's missing
5 is the C, which is actually children with
6 disabilities. So it makes sense that the other
7 subgroups are included and are captured here in
8 this romanette.
9 Then the second piece under this
10 romanette is that they ensure that they include
11 all the students in the assessment system, both
12 for the all-student group at the state level, and
13 then also for children with disabilities, in
14 particular. So this assessment is about children
15 with disabilities.
16 The purpose here is that we want to
17 make sure all kids are included in the
18 assessments, which is obviously an important
19 component of making sure you have valid
20 information across all of the schools and across
21 all of your districts, and we want to make sure

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1 that kids are not being precluded from the system.
2 That would be a concern for us.
3 The second section, romanette iii, is a
4 set of assurances where the state is looking at
5 what is happening with the district level. And we
6 focus this piece on two aspects of districts that
7 the state should be considering. The first are
8 districts that have exceeded one percent, which
9 makes sense. A state exceeding one percent, most
10 likely the districts that exceed one percent, our
11 biggest portion of math learning, so that they're
12 appropriately including all kids in the right
13 assessment.
14 But as we just talked about, districts
15 can exceed one percent, and there may be a really
16 good reason for districts to want to exceed one
17 percent. If you look just at the district that
18 exceeds one percent, that may not be sufficient.
19 It may not really give you a sense of what's
20 happening at the state level.
21 So the second set of districts that we

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1 highlight in this romanette is districts that the
2 state -- I'm sorry. Right. At the end of
3 romanette iii, "and any other LEA that the state
4 determines... participates in exceeding the cap".
5 And we did not define this. We purposely did not
6 define this as we assumed this might change from
7 state to state, and we wanted to give the state
8 some discretion to figure out what this might mean
9 in their context.
10 But, you know, the states should be
11 working with their districts to figure out or make
12 sure they're providing the guidance for their
13 schools and to make sure that they are not being
14 inappropriately assessed.
15 So these assurances focus then on those
16 groups of districts, those two groups, that
17 they're making sure they meet the guidelines that
18 we discussed yesterday in Issue Paper 4A that they
19 didn't increase the students who are taking the
20 alternate assessment unless the state can document
21 that there is a higher prevalence of such students

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1 who need alternate assessments and that the
2 districts are not disproportionately assessing any
3 students not on alternate assessments, and that's
4 from the previous romanette.
5 Then the third romanette, the romanette
6 iv, which appears on Page 5 of the issue paper, is
7 about the state's plan and timeline to improve
8 implementation of the state guidelines. The
9 assumption is that this waiver would be granted
10 for one year and that the state would be providing
11 information about how they are going to come into
12 compliance with what's in the ESSA to assess one
13 percent or fewer kids on an alternate assessment.
14 So these three bullets are focused on
15 improving implementation of the guidelines or
16 identifying who should be in an alternate
17 assessment, providing oversight for districts that
18 exceed one percent or that the state identifies as
19 significantly (unintelligible) one percent, and
20 also plans that address any disproportionality
21 that they identify as a problem within their

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1 state.

2 So I know we're going to have a lot of

3 discussion on this, so I just wanted to give us a

4 chance to walk through all the pieces together. I

5 do want to make sure we're thinking about this as

6 a package of what the state would have to submit

7 in order to help identify that it really does need

8 to exceed one percent.

9 We are trying to be clear that the

10 statue says one percent, and we are trying to

11 maintain that distinction for all states, to say

12 we're not going to just waive this requirement,

13 that we want to set expectations that it has to be

14 rare and adequately justified to exceed one

15 percent.

16 MS. PODZIBA: I think, just to help in

17 our discussion, I'm going to suggest that we start

18 with questions and comments and concerns on

19 Paragraphs 2 and 3, and then probably take a break

20 and start on the waiver section.

21 So, I see a lot of cards, but are there

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1 particular comments or questions on Paragraphs 2
2 and 3?
3 There are cards up. I'm assuming --
4 MR. RUELAS: What page is that?
5 MS. PODZIBA: So Page 3. Paragraph Two
6 is kind of in the middle. It's the beginning of
7 the text that we haven't seen in 4A and then up to
8 but not including Paragraph 4. So it ends at
9 romanette iii on Page 4.
10 So questions and comments on that?
11 Janel?
12 MS. GEORGE: Just a clarifying question
13 about what is meant by -- and I know this was
14 based on previous discussion, but just
15 clarification on "school, community, or home
16 programs in the LEA that have drawn large numbers
17 of families of students with the most significant
18 cognitive disabilities".
19 Just and example or an explanation of
20 what that could entail, what that means.
21 MR. HAGER: So I think part of what

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1 we're thinking is there could be an area in the
2 state where there's a rehab hospital or something
3 else that, you know, families are likely to live
4 in that general area because of the program that's
5 being offered, and so as a result they have a
6 higher incidence of students who would meet the
7 definition of students with the most significant
8 cognitive disabilities.
9 MS. PODZIBA: Alvin?
10 MR. WILBANKS: On Page 4, 2A,
11 "disproportionality" concerns me in that that is
12 not in the statute, and it's my understanding that
13 that's being looked at and I would be implying
14 that I think this is a limited -- whether or not
15 you get --
16 MS. PODZIBA: Excuse me, Alvin, could
17 you hold off on that, because I'm going to get to
18 that section after the break.
19 So we're above that up to but not
20 including Paragraph 4, which that follows from.
21 So just the very top of Page 4, and

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1 I'll get you first for the waiver, so that -- ok.
2 Lynn?
3 MS. GOSS: Mine's just kind of a
4 technical question. I'm new to all this and I've
5 learned a lot in this whole process, but can you
6 explain to me exactly, if something is in
7 regulatory text, and then if it's in a guideline,
8 if the guideline can have a "must" in it, so just
9 to kind of maybe clarify the differences in how
10 it's weighted and what should be where?
11 I just am kind of curious as to how.
12 Is my question clear?
13 MS. RIGLING: Are you reacting to
14 specific text here?
15 MS. GOSS: Well, just kind of in
16 general. Like I'll hear things, Like, well, it
17 should be in the guidelines.
18 MS. RIGLING: Ok.
19 MS. GOSS: So, if it's in the
20 guidelines, can there be a "must do"? So if there
21 are consequences -- if you have a guideline and

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1 you don't follow those guidelines, are there
2 consequences depending on how it's written into
3 the regulatory text? I guess that's my question.
4 MS. RIGLING: If it's in the
5 regulatory text and it's a "must," once the regs
6 become final, then that would become a requirement
7 in the respective regulatory entity, just as if it
8 was in the statute. So it essentially has the
9 force and effect of law.
10 Here in romanette ii, where we have a
11 "such as," that's meant to be guidance within the
12 regulation.
13 We also, and I think Richard has
14 probably more than anyone suggested that there's a
15 number of topics that we've talked about that
16 would be more appropriate being guidance. What he
17 means by that is, the detail probably would not be
18 included in the regulation, so it wouldn't have
19 the force and effect of law.
20 What the guidance does is it interprets
21 the regs or the statute. It's generally the

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1 Department's best interpretation of what it means.
2 It is non-regulatory, meaning it does not have the
3 force and effect of law.
4 If it uses the word "must," then that
5 "must" should also reflect a statutory or
6 regulatory requirement. That's at least our
7 guiding principal.
8 Maybe sometimes we make a mistake. But
9 if we use the word "must" in Guidance, it should
10 have a basis in the statute or reg. Otherwise,
11 guidance should be helpful information for the
12 respective entity to use in order to implement the
13 programs.
14 It's not meant to add additional
15 requirements. It's meant to give examples,
16 hopeful clarification, but not something that
17 you're required to follow.
18 Unless it says "must," and then it
19 should relate to a statutory or a regulatory
20 require.
21 MS. PODZIBA: Ron?

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1 MR. HAGER: And I have two on Page 3.
2 The first one actually is above Number 2, so it's
3 for one, but anyway I put it in issue paper
4 yesterday. Anyway but you have one, then you have
5 whatever the subletter i, ii and iii. Now it's my
6 understanding that the statute also requires that
7 the assessments include a UDL to the extent
8 feasible. I'm assuming that that should go in
9 here as well, or is there some other place?
10 Because this is the criteria for the alternate
11 assessments. Or do you have that somewhere else?
12 But it seems it would fit here, so it's
13 just a question of --
14 MR. ROONEY: I understand. In 200.2
15 are the requirements for all the assessments. It
16 says they must be consistent with the principals
17 of the Universal Design for Learning and all of
18 the assessments in 200.6, the technical
19 requirements are covered in 200.2.
20 And just to remind you, we talked about
21 this language above Number 2 on Page 3, romanette

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1 iii, there was a suggestion actually about
2 changing it. This doesn't encompass that
3 discussion that we had yesterday.
4 MS. PODZIBA: Did you have another
5 question?
6 MR. HAGER: I did. So I apologize for
7 not raising it yesterday.
8 But anyway, the other one is, it's
9 three -- well, romanette two, New Information.
10 Now you used the phrase, when you introduced that
11 topic, that the districts will have to provide the
12 information to review, and then on the next page
13 over you talk about required information.
14 So I don't know if you want to make it
15 clear that they require and review any
16 information, or that the state requires the school
17 district to provide the information and then the
18 state reviews the information.
19 I'm just trying to, you know, kind of
20 add in some language that you put in, but it's not
21 in this proposal.

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1 MR. ROONEY: I don't know that we're
2 opposed to that language. I also point to Thomas'
3 point earlier about unnecessary words.
4 Presumably if the state is going to
5 review the information, that will have been
6 submitted in some way in order for that to be
7 reviewed.
8 Also, the ESSA, the statute does not
9 require that the state approve the district to
10 exceed one percent. There is no cap officially.
11 They're just asking that, if it exceeds one
12 percent, that information the state would then
13 review to provide oversite.
14 MS. PODZIBA: Ok, Liz?
15 MS. KING: Yeah, I just wanted to add a
16 romanette iv that is about just -- sorry, right
17 here above -- right before the four, the
18 regulatory --
19 MS. PODZIBA: After romanette iii.
20 MS. KING: Yeah, so after iii add
21 romanette iv, that is make all of this information

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1 publically available, just for the sake of
2 transparency. The expectation is that this
3 process is meant to be a transparent process?
4 MS. PODZIBA: Any response to that
5 proposal?
6 MR. AHART: It already is, isn't it?
7 MR. PAYMENT: So are you asking --
8 that's my understanding, too, it already is. But
9 are you asking for something affirmative to make
10 it available? If it's available some place and
11 subject to FOIA, you can probably request it, but
12 it's not in one consolidated place where you can
13 get to it.
14 Are you asking to make it an
15 affirmative effort to make it available?
16 MS. KING: Yes, an affirmative effort
17 to make it available. Whether you put it on the
18 website or that sort of thing, I don't know. Yes,
19 publically available.
20 MS. PODZIBA: Other response to that
21 proposal? Is there anyone for whom it's not

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1 acceptable?

2 Alvin.

3 MR. WILBANKS: It seems to me when you

4 use "such as," that's creating a lot of confusion,

5 making it "but not limited to," for the

6 students --

7 MS. PODZIBA: Wait, where is that?

8 MS. BRIGGS: On Page 3, the left side.

9 MS. PODZIBA: So as relates to the

10 proposal to make it publicly available?

11 MR. WILBANKS: I was going to use "such

12 as, but not limited to".

13 MS. PODZIBA: So you're proposing "as,

14 but not limited to"?

15 MR. WILBANKS: I would propose that we

16 not use the standalone "such as."

17 MS. PODZIBA: Any other discussion of

18 make info publicly available? It sounds like

19 that's acceptable to everyone.

20 Audrey?

21 MS. JACKSON: I'm just wondering if

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1 there are any confidentiality issues with regard
2 to that?
3 MS. KING: No --
4 MS. JACKSON: They're not? Ok, cool.
5 MS. KING: Yeah, this is only at an LEA
6 level.
7 MR. ROONEY: So, can I just clarify. I
8 think there are some LEAs that are very small, and
9 I think Rich is having the same reaction as me,
10 that not just small charter schools, but also
11 particularly in some of our states with rural
12 areas, this may be -- it would be an issue for the
13 state.
14 And we explicitly say that one of the
15 reasons we may ask for the states to exceed one
16 percent at the district level is that you've got a
17 small number of students in your tested
18 population, so if you could recruit kids with the
19 most significant cognitive disabilities, that
20 would take you over one percent.
21 I do think we need to make sure we be

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1 careful about FERPA connections for small
2 populations. I don't know that off the top of my
3 head we've got a -- well, Judy is making an
4 exception. I think it needs to be run by our
5 FERPA, the Federal Education and Privacy Act,
6 United States v FERPA.
7 So we may want to check on that
8 language to make sure we've got the right caveat
9 for that, but I do think that's probably important
10 for us to have in there.
11 MS. PODZIBA: Tony, do you have a
12 question on this?
13 MR. EVERS: Just a question. Who is
14 submitting what?
15 MS. KING: Sorry, so, it could be -- so
16 here it will read "a state must make publically
17 available" information in i through iii.
18 MS. RIGLING: Just to be clear, this
19 is not something to us. This is something either
20 the state or the districts would have to make
21 publicly available.

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1 The state is our grantee, so I think
2 the expectation would be that the state makes this
3 information publically available. But it would
4 not be something that is reported to the
5 Department. This would be something the states
6 would make available in some manner as the state
7 deems acceptable.
8 MR. EVERS: What about the proposal?
9 What is the intention of the subparagraph?
10 MS. KING: So I will tell you the
11 intention, and then let's agree to make sure that
12 we're accomplishing that.
13 So the intention is that an LEA has
14 submitted information justifying their exceeding
15 of the one-percent cap, and we just want the
16 information that they are submitting to justify
17 their exceeding of the cap to be publically
18 available.
19 For example, an LEA has said, We are an
20 LEA which includes a hospital serving very high
21 need, for example, premature children, therefore

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1 we are exceeding the one-percent cap because our
2 population disproportionately falls under the
3 category of children with the most significant
4 cognitive disabilities. So we have exceeded the
5 one-percent cap, and this is why.
6 MS. PODZIBA: On this proposal?
7 Derrick?
8 MR. CHAU: Actually it seems like when
9 you read the rest of the section, it talks about
10 "a state must not prohibit reviewing information"
11 and then "provide appropriate oversight". I don't
12 now how they can make that information publically
13 available.
14 I'm wondering if the publically
15 available piece is really about the waiver in that
16 section iv.
17 MS. KING: No. So Derrick, I hear your
18 point, and I think you're right, and I think
19 actually it goes in romanette two.
20 Because, to Tony's point of what is
21 being made available; what is being made available

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1 is the information submitted provided under
2 romanette ii.
3 MR. CHAU: Ok.
4 MS. KING: So maybe that's where it
5 goes. Because there are two different -- when we
6 get to the other piece, we'd also like to make
7 available the state-level information, but here we
8 just want to make available the LEA-level
9 information.
10 So maybe it's "the state must review
11 and provide publicly the information submitted by
12 the LEA justifying the need of an LEA"...
13 Maybe those are the right words.
14 MR. ROONEY: So, look at the screen
15 where Judy has tried to capture that discussion.
16 (Brief pause.)
17 MS. PODZIBA: Yeah, that works for me.
18 Thomas?
19 MR. AHART: My trouble with this is
20 related to a discussion we haven't started yet in
21 that -- so.

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1 I have a district that has a
2 seventy-five percent poverty rate, and we have a
3 lot of refuge students, and the chances of my
4 district exceeding the one percent is tremendously
5 higher than or surrounding almost all white
6 ninety-five percent upper middle income families.
7 If they go up to .99 percent, that
8 doesn't red flag anything, and the chances of that
9 being -- they will put it in an assessment being
10 inappropriately implemented, in that context,
11 versus my district perhaps bumping up against one
12 percent now and then, or occasionally going over,
13 and then only reporting out those districts that
14 are exceeding the one percent, to me flies in the
15 face of the intent of the legislation since the
16 "state may not exceed".
17 Where you have concentrations of
18 certain populations where the appropriateness of
19 the alternative assessment is more prevalent, I
20 would say that the biggest problem in my state,
21 although I don't think it would be exclusive in my

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1 state, is not those districts that might be
2 bumping up or creeping over one percent now and
3 again, it's those that are safely staying under
4 the one percent -- you know, I know it's not
5 necessarily a cap, but under the one-percent state
6 cap, and have lots of freedom to inappropriately
7 use the alternative assessment.
8 So I think that the pressure is being
9 misapplied here terms of the state level trying to
10 protect that one-percent cap.
11 MS. PODZIBA: I was going to let Audrey
12 get a comment in on that.
13 MS. JACKSON: I was just going to say
14 that I think you're right, Tom, and again it's not
15 in my area of expertise totally, but I think
16 you're right in that the paperwork and the burden
17 for providing explanations falls to those over one
18 percent, but it doesn't necessarily mean that no
19 one will be paying attention to areas that are
20 disproportionately high, because the state's
21 motivation is to fall within the one percent

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1 overall.

2 So, even though they may not be

3 receiving paperwork and justification from those

4 under one percent, they're clearly going to be, I

5 would imagine, paying attention to areas that are

6 well above what would be expected.

7 MR. AHART: Well, the Guidance

8 certainly doesn't suggest that. And part of what

9 I'm trying to protect against is, once again, some

10 of the programming that some high-poverty

11 districts do actually attracts more students

12 because of the program that's offered, and this is

13 one more suggestion to the public that these

14 schools aren't performing.

15 I would argue that in many

16 circumstances that the districts are performing

17 very well and in fact they're providing services

18 that no one else is willing to provide, and hence

19 they become a magnet for some of the most

20 learning-challenged students. And the message

21 that gets sent out to the public, although not

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1 direct, has an internal continuing suggestion that
2 these students are not being served well, and I
3 think you could validly argue quite the opposite.
4 MS. PODZIBA: Liz?
5 MS. KING: So, a couple of different
6 things. I would just remind us, we're talking
7 about children with the most significant cognitive
8 disabilities.
9 MR. AHART: Yeah, so am I.
10 MS. KING: So we are expecting a
11 proportionate representation across various
12 demographics and situations. We're talking about
13 children only with the most severe cognitive
14 disabilities.
15 And then the one thing I would add is I
16 absolutely agree with you that this is not --
17 either the transparency here or the one-percent
18 cap here is not enough to make sure that all
19 children are getting the right assessment. That's
20 absolutely true and we can't put that weight on
21 here.

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1 The purpose of this is to provide the
2 information publicly, so that in the event that it
3 is a justification of our explanation that
4 everyone would be comfortable with -- we can all
5 see that and know that and understand that -- and
6 if it's an explanation that indicates the children
7 are not being well served, we can all see and know
8 and understand that, too.
9 So I think the fear is that allowing
10 this to happen kind of in the dark of night, which
11 is sort of what -- not even -- I mean, this is not
12 changing the force of law in the -- this is not
13 creating a new cap, this is not creating new state
14 authority to crack down on an LEA, or advocate
15 authority, you know, in the context of suing under
16 civil rights law or the federal government or
17 anybody else.
18 This is making publicly available the
19 process, so there is a greater opportunity to
20 understand and see this sort of justification and
21 rationale.

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1 So, I will say, for example, if the
2 justification and rationale were, We serve a high
3 concentration of children in poverty, I think
4 pretty clearly, within a variety of communities,
5 that would be looked at as not sufficient
6 justification.
7 Now the state hopefully will also look
8 at that and recognize that as a misapplication of
9 the alternate assessment, right, but this
10 information needs to be made transparently
11 available.
12 MS. PODZIBA: Let me give Janel --
13 MS. GEORGE: Sure. Just a quick point
14 to Thomas' concern. I again think that this
15 information will provide more clarity, more
16 transparency, which is definitely the point.
17 We're certainly -- and I don't think
18 you in any way were implying that high numbers,
19 for example, of refugee students automatically
20 means you have high numbers of students with
21 intellectual disabilities. I don't think --

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1 MR. AHART: No, I'm not saying that.
2 MS. GEORGE: -- you were implying that
3 at all.
4 MR. AHART: I'm not saying that.
5 MS. GEORGE: I think the implication
6 was that if you're dealing with different
7 populations with challenges, that information
8 might be misinterpreted.
9 Again we're talking about a very narrow
10 exception of students with the most significant
11 cognitive disabilities. And if anything, I think
12 the more transparent the information about the
13 students you're serving should help inform the
14 public about some of those challenges. But again,
15 that's a very small segment of the population.
16 And I do hear you in terms of some
17 times information is misinterpreted, but it's my
18 hope that it will really kind of list and provide
19 more transparency about the different populations
20 that LEAs are serving and the different challenges
21 that they're faced with.

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1 MS. PODZIBA: Ok, I'm going to -- Aaron
2 is it on this item?
3 MR. PAYMENT: Yes.
4 So I have to give you a really quick
5 affirmative answer, and then I'll address my
6 question and my comments.
7 I am confident that all of this
8 research that came to the one percent is devoid of
9 anything reliable with regard to the American
10 Indian populations. We are chronically left out
11 of all of these studies that determine that the
12 one-percent threshold is the appropriate
13 threshold.
14 I think there is a huge underdiagnosis
15 with a neighboring country, or with autism, or
16 special ed, and then we have to compound the
17 impact of the low economic status of people in
18 this generation who don't know how to advocate for
19 their children.
20 So all of that that people went through
21 about twenty-five years ago, thirty years ago,

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1 we're now starting to go through as we become
2 empowered and advocate for our children.
3 So when we use a threshold of one
4 percent, so this is going to sound confusing to
5 you because I'm not on anybody's side, when we use
6 a threshold of one percent, I think the threshold
7 is a drastic undercount in our population, and I
8 think picking a static esthetic number is kind of
9 nonsense. But it's been picked, so we have to
10 work with it. It's been picked.
11 There is a safety valve with respect to
12 the Secretary's authority to grant waivers, so I
13 think really what we do is try to give guidance on
14 the appropriate times when we would provide those
15 waivers.
16 So, I'm addressing the data issue, so
17 this is a data issue for me. So, when the states
18 have to report out, you know, they're one percent
19 and not having the transparency at the
20 federal/local level is like trying to do a
21 research project and not being able to unpack the

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1 elements that make the final statistics, and that
2 is in and of itself nonsense.
3 So, I think that for me, we already
4 have the difficulty of trying to get to the data
5 that affects our people, and we're already left
6 out of these national studies because of the small
7 incomes. Go research this if you have never
8 thought of this before, you will find out the
9 disparity that exists in that issue. Then it's
10 more important for me as a tribal leader and
11 tribal leaders across the country to try to get to
12 that information. And if it's hidden within the
13 state statistic, then we can never get to that
14 data.
15 I think it is about advocating. It is
16 about going and being able to find out what's
17 happening on the ground in a local district. And.
18 I heard behind me the word shaming, and
19 it's not about shaming. It's about best
20 practices. I don't think most governments and
21 most school systems are about trying to find ways

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1 to get out of it. I think, once you understand
2 it, you know there's a purpose to educate our
3 children, you find a way to do it.
4 I don't think it's about shaming at
5 all. I think it's about demonstrating what school
6 districts are doing so that you could try to do
7 better.
8 MS. PODZIBA: Tony?
9 MR. EVERS: Great conversation.
10 I'll just amplify something that Thomas
11 was talking about. In our state we have open
12 enrollment, public school for enrollment. Kids
13 can go any place they want to in the state of
14 Wisconsin. And if it's not in your state it will
15 be coming soon.
16 And we have areas of the state that are
17 probably better off and offer more robust programs
18 than others. In those cities, in those school
19 districts, parents choose to have children with
20 cognitive, significant cognitive disability
21 situations openly enroll into more robust programs

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1 where they can probably succeed at a better rate
2 than where they came from.
3 And this is just a push, pull thing.
4 It's not really about shaming and whatever. But
5 if a district bumps over and a state may come in
6 and challenge this district to do better, likely
7 those children that open enroll there, because the
8 districts do have the opportunity to stop that,
9 will be sent back. And it's going to impact kids,
10 you know, individual children who will not be
11 getting the services they got prior to that.
12 I don't think it's something we can
13 solve, but you have to understand some of the
14 consequences here is that some children will be
15 served in a less robust, helpful environment.
16 MS. PODZIBA: So I'll just let it keep
17 going.
18 Ron, you're up.
19 MR. HAGER: Thank you, and I guess I'm
20 going to do a rolling comment.
21 But to start with, to Tony and Thomas'

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1 comments, and I may seem like I'm parroting your
2 concerns right now, Mr. Evers, but the whole
3 statutory scheme, which is reflected in this
4 requirement, and it's all in the prohibition under
5 local cap in the statute, the state may not impose
6 a cap, that's A. B, except that a local agency,
7 LEA, that exceeds the cap applied to the state,
8 which is the one percent, shall report to the
9 state, and then that group is subject to
10 oversight.
11 So that's the language in the statute
12 that's reflected in this regulation. And the
13 whole point here is, and I think that was Alvin's
14 point about "such as" and "including," you know,
15 it's not based on socioeconomic status. It's not
16 based on, you know, the type of disability. It's
17 based on the criteria of most significant
18 cognitive disability.
19 And if the LEA can report back to the
20 state the reason why we have more -- The reason
21 why it exceeded the cap is we have open enrollment

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1 and these people paid into our program, then the
2 oversight might just be, you know, to look at the
3 criteria and say, Ok, fine, we're done. So that's
4 the A part. So the justification could totally
5 fit within what you're suggesting.
6 And then the request of to it be
7 public, again, it's not about shaming. It's
8 about, Ok, we're looking at the information that's
9 available, so we're not really --
10 So I'm just saying that your points are
11 well taken, but this is kind of the way the
12 statute is.
13 So you could have a school district
14 that's totally misapplying the standard, but
15 they're under one percent, and they're not
16 flagged. That's the way the statute works.
17 MS. PODZIBA: So, Ron, I think the
18 piece you may not be hearing is the concern, for
19 example, about the newspaper article that comes
20 out when that's out.
21 That's what I think people are getting

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1 to, that schools that may be over one percent will
2 get some attention that's not helpful. I think
3 that's the way --
4 MR. HAGER: Can I respond?
5 MS. PODZIBA: Yeah.
6 MR. HAGER: The response is we have a
7 great program in our district. They're tracking
8 all these students, and we're serving the best we
9 can. And that's it.
10 MS. PODZIBA: Well, I just ask you to
11 take that in, because I know that you might have a
12 solution for how to respond to it. But I think
13 that's what people are trying to make understood.
14 Tom?
15 MR. AHART: That's part of it, but part
16 of it is, and I don't think this is being heard,
17 is that the suggestion here is that there's only a
18 problem that the alternative assessment is only
19 being misapplied if the district exceeds one
20 percent, and that's ridiculous. I can tell you
21 that that's ridiculous. And that's what's

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1 completely ignored here, it feels.

2 So then it does become, the theme of it

3 does become, The only time we pay attention is if

4 you've exceeded one percent; and the message to

5 the public is, If you have exceeded one percent,

6 you're doing something wrong, and you have to make

7 up some excuse for why you're doing that, and if

8 you don't exceed one percent, everything is

9 absolutely fine."

10 And what I would argue, and you can

11 look at this by district and see what programs are

12 offered, because there are schools that are set up

13 to better meet the needs of some of these students

14 that have significant cognitive impairments. And

15 there are also districts that are set up to push

16 those students away.

17 MS. RICKER: Yes. I know.

18 MS. HARPER: So if the real issue is

19 equity of service and fidelity about implementing

20 what the intent of the code is, then I think that

21 some of these guidelines are misplaced and ill

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1 advised.

2 MS. PODZIBA: I'm going to take the

3 comments of all the people, I've got a list, and

4 then we'll take a break.

5 Rita, you're next.

6 MS. AHRENS: Sure. I can appreciate

7 the desire to highlight schools that are doing

8 well and districts that are doing well in terms of

9 these assessments that are being administered, but

10 I think, you know, the parents that we've been

11 working with want the transparency in the data

12 because they have fears of overidentification, and

13 they have told us that without the data at the

14 district level of the group of students that are

15 being identified to what levels, they cannot press

16 the district to make -- they can't advocate on

17 behalf of their students for more effective

18 policies.

19 And so from the parents' perspective,

20 you know, it's better to have the transparency,

21 because in some cases, and I think that some LEAs

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1 are doing a good job and some aren't, and we've
2 been told there is an inconsistency at the
3 district level, even in applying state guidelines
4 for the definition of students with the most
5 cognitive -- severe cognitive disabilities, and
6 without that data it makes it very difficult for
7 our parents to take any sort of action, especially
8 for parents who are limited English proficient,
9 who already struggle with navigating and
10 understanding, you know, legalese and other
11 things.
12 So having this data is just another
13 piece that they can utilize.
14 MR. AHART: The data is one thing and
15 information is another. And when data is
16 presented as information, because you have a cut
17 line there that may or may not relate to the
18 quality of services, then I would suggest we may
19 be actively, although not intentionally,
20 misinforming the parents who need the best
21 information.

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1 MS. PODZIBA: Let me get a few more
2 comments in.
3 Mary Cathryn.
4 MS. RICKER: Are we still on proposed
5 four?
6 MS. PODZIBA: Yes.
7 MS. RICKER: Because my comment is
8 on --
9 MS. PODZIBA: That proposal?
10 MS. RICKER: No, it's on something --
11 MR. PODZIBA: If you could hold off an
12 that 'till after the break.
13 Liz?
14 MS. KING: So sort of going through the
15 two different pieces, the public pressure piece,
16 absolutely. I mean being fully transparent, that
17 is our objective. We as advocates in our role,
18 recognizing your role is as an advocate as well,
19 but as advocates in our role, we want this
20 information to be able to pressure systems to
21 change that are not doing well. And realizing

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1 this is just one data point, it doesn't tell you
2 anywhere near enough about whether a system is
3 serving children well, but it is an important data
4 point to this piece.
5 And then this idea, this concern about
6 creating a binary Every district over one percent
7 is not serving children well; Every district under
8 one percent is serving children well, I absolutely
9 hear that as well. It's important to remember
10 that IDEA provides individual protections at the
11 child level that are unaffected by all these
12 provisions, and that will continue to be the case.
13 I mean, this is something we're worried
14 about because one percent is high. One percent
15 represents more than is likely representative of
16 eligible children within the population. So it is
17 very much the case if we think about the research
18 saying that, you know, we are really talking about
19 point five I think was one of the numbers. Point
20 five percent of children, there's a big gap
21 between point five estimated to be eligible and

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1 the one percent. So that's a fair concern, and
2 that sort of speaks to, this is one tool, you
3 know, in a toolbox full of ways to make sure that
4 children with disabilities are being well-served.
5 The sort of two pieces that I'm
6 interested to hear an alternative way that you
7 would address them, other than providing public
8 transparency about the process, is first, to this
9 issue of historic inclusion.
10 So Aaron raised the issue of the
11 inappropriate identification of native children as
12 having a disability. So native children are
13 grossly overrepresented in special education, and
14 that's deeply culturally and historically loaded;
15 and children of color are overrepresented
16 specifically in the intellectually disabled
17 category, those children who are most likely to be
18 identified for inclusion in the alternate
19 assessment.
20 So there is a deep -- there is an issue
21 here that is not just about disability but is also

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1 about race and also about status of the native
2 child.
3 So, thinking about the way those have
4 worked, how can we help to ensure that there is a
5 remedy to that historical problem using this tool
6 in this way.
7 And then the other question that I
8 think -- we need to hear, if there's a better way,
9 given the degree of flexibility provided to LEAs,
10 because there is no LEA cap, and because the state
11 has explicitly prohibited it from imposing an LEA
12 cap, what other ways can we ensure that this
13 process, which has all this flexibility, is being
14 fairly applied without having public access to
15 this information -- this data, this information
16 about what is happening at the LEA level.
17 MS. PODZIBA: Delia?
18 MS. POMPA: It seems to me that we've
19 agreed on the goal of transparency and not
20 singling out those over one percent and those
21 under, because we don't know the underlying

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1 reason.

2 So one way to do this would be to make

3 a transparency about the LEA period, how many kids

4 they're excluding or not assessing because of

5 severe cognitive disabilities, rather than just

6 those over one percent. And if you've made that

7 data public, then advocates, parents, educators,

8 could make a judgment about why it's point five,

9 why it's one, why it's one point two.

10 And you've reached your goal of

11 transparency. You've reached your goal of not

12 shaming individual districts if they go over one

13 percent. And you've allowed for some

14 investigation by legislators and stakeholders

15 alike.

16 MS. PODZIBA: Leslie?

17 MS. HARPER: I'm not a statistician.

18 That was my dad, who I would go to with all of our

19 needs in Indian country education, who spent a

20 decade running our school. May he rest in peace.

21 Now I've got to rely on other folks a few more

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1 degrees removed from us and send the questions
2 out.
3 So what happened to our previous
4 discussion around -- we discussed a range of this
5 percentage, and although we may be talking about
6 the one-percent cap, or, you know, you've got to
7 cap this one percent of the kids who were
8 identified, you know, and who are taking it, I
9 mean, couldn't we in our Guidance say, hey,
10 states, let's report on the range of percentages.
11 We know some of them are reaching that
12 one percent, but they're kind of harbored, and
13 there's something going on there, you know. And
14 if they're over that one percent, then, you know,
15 we're saying they're overrepresented above that
16 school that's at point ninety-five percent. You
17 know, we're not asking for that.
18 So this is what I'm getting from home
19 from our special ed departments and from our
20 tribal nation's education department, is that, why
21 are we not describing a range of percentages.

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1 So it's not asking to change all of our
2 rule stuff. It's just saying, Hey, states, let's
3 talk about what's going on, you know? It's
4 talking about more transparency, and it's talking
5 about more reporting.
6 MS. PODZIBA: Ok, I'm going to --
7 MS. HARPER: What happened to that
8 discussion?
9 MS. PODZIBA: I'm going to take a
10 break. It's 11:00. Let's take a break to 11:15.
11 Kay, did you want to say something to
12 this before we break?
13 MS. RIGLING: Yes, please.
14 I just wanted to make a point that
15 actually under ESSA they have added a requirement
16 to the state and local report card requirements to
17 report "the number on percentages of students with
18 most significant cognitive disabilities who take
19 an alternate assessment by grade and subject".
20 So I think that will be a new reporting
21 requirement at both the state and district level

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1 in the future.

2 MR. HAGER: For all districts.

3 MS. RIGLING: For all districts. So

4 that might help in some of the discussion when we

5 come back after the break.

6 MS. PODZIBA: Let's take a break 'till

7 11:15.

8 (Recess taken.)

9 MS. PODZIBA: Alright, I think we're

10 ready to get started.

11 So I'm hoping that we can pick up the

12 pace a little bit, because we've got a lot to do

13 this afternoon. The hope is that we get through

14 all of the assessment issues.

15 So, I'm going to give Kerri and Alvin

16 the last comments on this, see if there's

17 agreement to add this, and if not we'll move on to

18 the next item.

19 Kerri?

20 MS. BRIGGS: I think that the question

21 I had before the break sort of raises which is in

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1 the state report, which I think also now is
2 required at the LEA level, they have to report on
3 the number of percentage of kids with the general
4 accommodations and alternate assessments. But I
5 think this language is unnecessary. I do want to
6 say that I think adding regulations that aren't
7 necessary is not a good idea, particularly with
8 the RDN, the LEA requirements.
9 So I think, particularly since not all
10 LEAs are not only at or around, but above.
11 MS. PODZIBA: Alvin?
12 MR. WILBANKS: I would agree with
13 Kerri's statement about the regulations,
14 additional regulations not being necessary,
15 however, if it does go in, I would question the
16 use of disproportionality here.
17 In the ten or fifteen minute previous
18 discussion, we talked a lot about what I think are
19 reality and court opinions. As a practitioner we
20 don't like bad headlines either, but I am not sure
21 that I will purposely try and come up with any of

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1 this because it doesn't have any really
2 relationship with what we're supposed to be doing
3 here.
4 What we're trying to do I think is
5 determine which students need the alternate
6 assessment and is that criteria what they should
7 have, if they are selected for that, and as a lot
8 of the reasons were suggested earlier, who gets in
9 and how many, whatever, should be based on that.
10 It shouldn't be based on other things that
11 sometimes get caught up in the discussions.
12 And I would just like to say that I
13 think our job actually, you know, as a
14 practitioner, we do have some students that are
15 homeless, and I need to be an advocate for those
16 students, and I believe I am. We have some that
17 have a Rolls Royce or Mercedes. I have to be an
18 advocate for those students. I have to be an
19 advocate for all students. I think the purpose of
20 the legislation is to make sure those students who
21 need more get more, and those that need to be

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1 brought up to a threshold be brought up to a
2 threshold, and all the things in between.
3 So I do not see really a need for the
4 additional regulation. If we do, I'm really
5 concerned with where the disproportionality goes.
6 MS. PODZIBA: That's what I'm hoping we
7 can get to once we finish this. So I'm going to
8 call the question on this.
9 We've spoken about this item for like
10 forty-five minutes.
11 Liz, yes.
12 MS. KING: Yeah, there is a confusion.
13 So I can address the confusion or we can make a
14 decision.
15 MS. PODZIBA: If you think the
16 confusion will get us to a better outcome, go
17 ahead.
18 MS. KING: Yeah, so Kerri was saying
19 that it's already required that to be reported.
20 The distinction is the reporting of the
21 justification be reported by the LEA, not the

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1 percentage of students taking the alternate
2 assessment.
3 MS. PODZIBA: Thank you for that
4 clarification.
5 Janel, do you have another
6 clarification or is it the same?
7 MS. GEORGE: No, I had just a point.
8 To add again, not to belabor this, but
9 there are significant consequences, as I'm sure we
10 all know, for students who take these alternate
11 assessments. Most of them are taken out of the
12 general classroom. So this is not something to be
13 taken lightly, which is why we are really
14 providing clarification about the justifications
15 for these waivers.
16 These students are ten percent of all
17 students with disabilities. So this is
18 significant. We can't lose sight of the
19 implications, the consequences of taking these
20 alternate assessments on students.
21 I look forward to having the

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1 conversation about disproportionality because it
2 is a very real and pervasive issue, and it is
3 consistent with again the point of equity under
4 Title I of the IDEA and the purpose of this law.
5 So that is something that I think is consistent
6 with this law and its focus, and I understand that
7 we'll discuss this soon, but I just again want to
8 underscore that this is significant for the
9 students, for the parents, and so transparent
10 information about the consequences of taking these
11 assessments is really critical.
12 MS. PODZIBA: Ok. Is there anyone who
13 can't live with the proposal for the new iv? Is
14 there anyone who would dissent from that?
15 Ok, Mary Cathryn, I know you had
16 another item in this section before we get to
17 waivers, and I realize that's where we want to
18 get.
19 MS. RICKER: Yeah, I have a question
20 about language at the bottom of three, and then a
21 actually a question about four, but let me start

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1 with three.

2 In romanette ii, Alvin had earlier

3 suggested inserting "encouraging but not limited

4 to," because I had brought up two weeks ago

5 unforeseen disasters impacting the health in the

6 community, and I specifically brought up Flint,

7 Michigan, but I think that we also know that there

8 are enough headlines around the profound impact of

9 Zika virus in communities in central America right

10 now.

11 We don't know what that next thing will

12 be. There always seems to be a next thing, and I

13 think, absent -- I completely agree with the sorts

14 of things that are listed. And having worked in

15 and represented the teachers at a school, Bridge

16 View, Patry 12 School (phon) at St. Paul that was

17 specifically built from the ground up to only

18 serve students with significant cognitive

19 disabilities: so extra wide hallways that allow

20 hospital rails to go down, different sight lines

21 for students with devices to be in stand-up

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1 wheelchairs, pool therapy, adaptive physical
2 education, really robust...
3 So I absolutely have seen first hand
4 the attraction of that to students and families in
5 surrounding communities, as well, rather than
6 enrolling in their home district. And at the same
7 time I have seen now in this position enough of
8 our members and with other educators across the
9 country deal with the unforeseen circumstances
10 that impact the health of the community fairly
11 profoundly, that I do believe it is --
12 MS. PODZIBA: Could you tell me
13 specifically what it is that you want to add.
14 MS. RICKER: So, my suggestion would
15 be, where we have school community or health
16 programs that draw large amounts of families, you
17 know, either right after -- like right before the
18 word "or," some place where we could list
19 something like, you know, "such as unforeseen
20 disasters impacting the health of a community".
21 MS. PODZIBA: Ok. Comments on that

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1 proposal? Natural or manmade disasters?

2 MS. RICKER: Human-made.

3 MS. PODZIBA: Alright --

4 MS. JACKSON: Do you have "such as"?

5 MS. PODZIBA: Any comments on this

6 proposal?

7 Thomas?

8 MR. AHART: We're just talking about

9 the bottom of Page 3, right, and the top of Page

10 4?

11 MS. PODZIBA: Right. So that is now,

12 "such as but not limited to," and it's just adding

13 another potential example.

14 MR. AHART: Yeah, I guess I would

15 suggest that we just strike all of it. The point

16 is we're not serving kids who ought to have this,

17 and we're not serving kids who ought not to.

18 MS. PODZIBA: So you're proposing to

19 strike what?

20 MR. AHART: Everything after "alternate

21 assessment".

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1 MS. RICKER: All the red, that's the
2 other option.
3 MS. PODZIBA: Response to that
4 proposal.
5 Richard?
6 MR. POHLMAN: To the extent I become a
7 broken record, I think that everything that is
8 being said is extremely valuable, and that, to the
9 extent that our comments can have an impact on the
10 Department's approach to Guidance rather than
11 regulation, I think that there is a role for this
12 level of specificity within Guidance that can
13 further clarify regulations.
14 I don't think the regulations are as --
15 or the act is unclear now that items like this
16 need to be considered, because that list is so
17 incredibly long. I do wonder if we don't start
18 encroaching on the space where Guidance is very
19 helpful, rather than in spending time enumerating
20 all the things where this could be used.
21 MS. PODZIBA: Patrick or Kay, do you

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1 want to say something about why the Department
2 thought it was important to include examples?
3 MR. ROONEY: I can try. I think
4 when -- so I mentioned, in the beginning, that
5 this language was pulled from a different section
6 of the regulations, and when we put that in there,
7 I think our intent was to provide some support for
8 the one-percent cap that was on the percentage of
9 kids that can be included and why it might be
10 impossible that districts would go over that one
11 percent.
12 And I think all of that was done in the
13 regulations, so providing it was not in the
14 statute or in No Child Left Behind.
15 But by adding those descriptions it
16 provided a little more clarity to the field as to
17 how those might apply to people if laid out.
18 I do see the point that really just --
19 because it suggests, to Kay's point earlier, that
20 means it is guidance to the field and not a
21 requirement that these are the list of possible

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1 scenarios.

2 I don't know if Kay would add anything

3 to that.

4 MS. RIGLING: No, I don't have

5 anything.

6 MS. PODZIBA: Lynn?

7 MS. GOSS: And I guess I just wanted to

8 remind that every alternate assessment that's

9 taken is an IEP decision, and so the parents are

10 at the table, the appropriate staff are at the

11 table, and so whatever circumstances are in your

12 community would be vetted for that IEP process.

13 MS. PODZIBA: Marcus?

14 MR. CHEEKS: I wanted to weigh in just

15 a moment about the subject matter of Guidance.

16 For some reason it appears that we're

17 getting an impression that Guidance doesn't carry

18 any kind of weight whatsoever. And from a state

19 agency standpoint, I would argue differently.

20 Often school districts request

21 information about different positions, different

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1 directions. My response, which is pretty much
2 what the reference is going to be between the
3 highway between the district and our state agency,
4 is a lot of times lead by what I am seeing in
5 non-regulatory guidance.
6 In as much as it may be coupled with
7 the specificity of the law, it also is viewed
8 through the lens of the practicalness of the
9 guidance that is shared.
10 So I don't want anyone to take away
11 from the fact that we may not get it written into
12 the law and all of a sudden it's not as value
13 added, but the Guidance still carries that point
14 of weight to the point where we still guide the
15 practice from the state agency's standpoint.
16 So I just thought I'd share that piece.
17 MS. PODZIBA: It sounds like the
18 comments have been supportive of the proposal to
19 delete the red of romanette ii.
20 Ron --
21 MR. HAGER: I wanted to have a

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1 follow-up with Patrick.

2 You had mentioned that this material is

3 currently in the regs and it's currently being --

4 well, it was being used for AYP. Were there

5 problems with the districts using this

6 information? Was this hard for, you know, the

7 programs to comply with? Is there a reason?

8 I mean, I would favor leaving it in.

9 MR. ROONEY: So I don't know that I can

10 answer that question, Ron, because I don't know

11 that people have a problem with it.

12 I will say that there wasn't a "comply

13 with" aspect to it. These were described -- these

14 were "such as". So they were just examples to the

15 field of reasons a district may go over the one

16 percent of kids who scored proficient on the

17 alternate assessment, which is where the current

18 regulations are.

19 I think, because the cap is now on the

20 assessment, if we were keeping it in, I think it

21 would be removed from where it is in the current

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1 regulation because that is around calculating it
2 by D, which is no longer a relevant term under
3 ESSA. So if we wanted to keep examples in the
4 regulations as opposed to putting them in
5 Guidance, I think this would be the place to do
6 it.
7 MS. PODZIBA: Ok, so I guess to move us
8 forward, because it looks like it's moving in that
9 direction, is there any dissent from deleting this
10 paragraph, for the red example?
11 Ron?
12 MR. HAGER: Just a point of
13 clarification. If you delete the red, you still
14 would have the language about the -- you know, the
15 state still has to require that school districts
16 have to provide the justification to the state,
17 and then the qualifier that we had in the reg this
18 morning, it would still be there in iv.
19 MS. PODZIBA: Correct.
20 MR. HAGER: With that clarification,
21 I'm fine.

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1 MS. RICKER: We're going to Guidance,
2 or that's a separate issue?
3 MS. PODZIBA: We're not negotiating the
4 Guidance, but I think the Department will take
5 those in mind.
6 Aqueelha?
7 MS. JAMES: Just a clarification for
8 the words "and review information".
9 The state is required to submit that
10 information in the fact that we're -- not
11 monitoring, because the states are required to
12 submit it, could we think about changing the word
13 "review information"?
14 MR. ROONEY: Just to be clear, the
15 state does not submit information to the
16 Department for this. This one is about, if a
17 district exceeds one percent, the district
18 provides information to the state and the state
19 reviews it, and then the state provides oversight
20 of those districts.
21 There is no expectation for them then

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1 to submit that information to the Department under
2 this section of the regulatory statute.
3 MS. JAMES: I agree with you. So the
4 recommendation is to receive information instead
5 of review it.
6 MR. ROONEY: From the statute, the
7 statute is to review information. And I think
8 "receive" is a very passive term.
9 If you look at the statute on Page 88,
10 it's totally very different. It's on the bottom,
11 Roman numeral II, it's the prohibition on local
12 cap where it gets -- "except by a local
13 educational agency exceeding a cap under this
14 clause shall submit information to the state
15 justifying the need to receive such cap".
16 I think our preference would be
17 "review" rather than "receive," because it sounds
18 as if it's providing an expectation that the state
19 is willing to look at that information and not
20 just collect it.
21 So that would be our preference. I'm

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1 open to discussion.

2 MS. PODZIBA: Ron?

3 MR. HAGER: That was the thing I had

4 mentioned earlier this morning, but I do want to I

5 guess point out that in sublet iii, it says

6 "provide appropriate oversight to an LEA that is

7 required to submit information to the state."

8 So it's there after the fact. So you

9 put in the statutory language that they are

10 required to submit it. It's just not in where you

11 have the review.

12 If you look at the end of three, we

13 have that bolded language, which I believe we

14 added in, which is the stuff that is in the

15 statute. So you have it in, the requirement is

16 there, but it's just in a different spot.

17 As I'm reading this. I may be

18 misreading it.

19 MR. ROONEY: It's still a question that

20 the district is submitting to the state, and then

21 the question is -- because we write our

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1 regulations about the expectations for the state,
2 and not the district. The requirement for the
3 district is that state would, when it reviews or
4 receives the information the state has submitted,
5 right, the action is the district "submitting,"
6 but a regulation is written as requirement for the
7 state, which is an awkward transition from what's
8 in the language of the law to the language of the
9 regulations.
10 So for that reason we used the word
11 "review". But they're just going to submit it and
12 then the state has to do something whether it
13 receives it or whether it reviews it. It's a
14 separate choice.
15 MS. PODZIBA: Patrick, just to clarify,
16 is it the Department wants to keep "review"? I'm
17 not sure if you're open to "receive" or if you're
18 affirming that you want "review".
19 MS. RIGLING: I think we would prefer
20 review. I think the word "justify," which is the
21 word that's used, that "the LEA needs to justify

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1 why it exceeded the cap that's on the state
2 implies some sort of review of that justification.
3 Because "justify" is a pretty strong word.
4 MS. PODZIBA: So is there anyone who
5 can't live with maintaining "review"?
6 Thomas?
7 MR. AHART: So is the implication then
8 that the state would accept or reject?
9 MR. ROONEY: I don't think so.
10 MR. AHART: Require another action?
11 MR. ROONEY: I don't read the statute
12 to say that the state has that ability to reject.
13 They provide oversight.
14 MR. AHART: I don't either, but review
15 would imply to me that they're there to make some
16 sort of judgment, and I felt like if you put
17 "review" in there, that's going to either be
18 interpreted as another action as required of the
19 state, if we go beyond, you know, "receiving," it
20 says "submit," and it doesn't say -- it's pretty
21 clear that the state doesn't have the authority

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1 under the code to make a judgment on the LEA as to
2 the --
3 MR. ROONEY: Right, but if you look at
4 the next Roman numeral in the statue as well as
5 the regulation, the state then is required to
6 provide oversight of all of those districts. I
7 think you cannot provide oversight if you haven't
8 reviewed the information.
9 So I see your point, Thomas, and I
10 don't read the regulation to say that the state
11 has a responsibility or a duty or authority to
12 disapprove a district that wants to exceed -- or
13 needs to exceed more than one percent of the
14 alternate assessment.
15 But they do have a duty to provide
16 oversight. I think it's hard to do that without
17 having reviewed the information.
18 MR. AHART: Could we just use the
19 language of the statute, then?
20 MR. ROONEY: Again this is where it
21 gets tricky in that the requirement in our

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1 regulations what the state must due, and the
2 statute is written as to what the district must
3 do.
4 I don't have a good suggestion. I'm
5 open on suggestions on how to write it so it's the
6 state requirement that the district submit, that
7 the state require that the district submit.
8 MR. AHART: Adjective would be
9 "receive," that's what seems most reasonable to
10 me, in terms of implying an additional step
11 required by the ESSA.
12 MR. ROONEY: What if we said "the state
13 must require the district to submit"? Well, I
14 don't think so.
15 I mean, this is about if the district
16 exceeds one percent. I don't think in romanette
17 iii, the first one is not prohibiting the LEA from
18 assessing more than one percent, and two is
19 assessing the information.
20 If we could reorder that to get to the
21 point of the statute, it would say, "so the state

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1 must require the district to submit," if you want
2 to use the word submit.
3 MS. PODZIBA: Rita?
4 MS. AHRENS: I have a comment on the
5 word "review". I'm quite fine with it. Because
6 when we're talking about Congressional intent, I
7 don't think Congress means for the LEA to submit
8 information to the state and have the state do
9 nothing with it, because that would be quite a
10 meaningless action.
11 So I think that the implied review of
12 the information is something that we can't put
13 into the regulatory language. Thank you.
14 MS. PODZIBA: So would everyone be ok
15 with "require the district to submit"? Everyone
16 ok with that?
17 I think that takes us then to the
18 waiver part of the discussion.
19 Ok, it, Thomas.
20 MR. AHART: Are we still talking about
21 romanette iii, which also includes review.

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1 MS. PODZIBA: Patrick?
2 MR. ROONEY: Sorry, I need to go back
3 and look at what's in the actual statute.
4 MR. AHART: I would just recommend that
5 we take out the clause "based on its review of
6 this section" under Paragraph C(3) ii of this
7 section and keep everything else, except for that
8 which was already stricken.
9 MR. ROONEY: Sorry, Thomas, could you
10 repeat the suggestion.
11 MR. AHART: Sure. I would strike
12 "based on its review of this section". So it
13 would read "appropriate oversight as determined by
14 the state of an LEA that is required to submit
15 information to the state".
16 MR. ROONEY: So can we flag that, and I
17 need to talk to some colleagues and then come back
18 on that.
19 MS. PODZIBA: Sure. We're going to
20 just wait for the Department to have a chance to
21 look at that further. Ok, we'll come back to

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1 that. Again, I'd like to get to the discussion of
2 the waiver section of this, so I'm opening the
3 floor for that discussion.
4 Tony.
5 MR. EVERS: I think the waiver is a
6 process that we need to kind of narrow down and
7 make sure that the state's doing the right thing.
8 However, I believe that a state could
9 not disproportionately assess students, so on, so
10 forth. In my opinion that creates an undue and I
11 think unfair occurrence that a waiver might be
12 rejected because of prior bad acts. That's
13 relatively unusual in my experience with the
14 government and it takes up what usually is a lot
15 of work going forward. I just feel uncomfortable
16 with using that opportunity to go backwards in
17 time instead of forward.
18 So I would ask for the deletion of A.
19 And I have another question, but I'll
20 wait, because I guess this deletion will take some
21 time to sort through. So I'll talk about that in

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1 a little bit.

2 MS. PODZIBA: So the proposal is to

3 delete A on Page 4. That's the first A, under

4 romanette ii.

5 Liz?

6 MS. KING: Yeah, I just wanted to speak

7 in favor of preserving this.

8 I think that disproportionality is not

9 conclusive evidence, but it is certainly

10 supporting evidence that there is a systemic

11 problem with the way that children are being

12 identified for and served under the assessment.

13 So, for example, imagining a scenario

14 here in which either English learners or

15 African-American students are overrepresented in

16 the alternative assessment would suggest that

17 there is a structural problem around the way that

18 those children are being identified for inclusion

19 of the assessment.

20 But since the entire intent of this

21 waiver is to make sure that when a state is

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1 exceeding the one-percent statutory requirement,
2 statutory cap, that it is not evidence of systemic
3 failure to meet the needs of those students.
4 Disproportionality does suggest in fact
5 that they are failing to meet the needs of those
6 students and therefore in fact should not be given
7 a waiver.
8 MS. PODZIBA: Janel?
9 MS. GEORGE: Oh, no.
10 MS. PODZIBA: Tom?
11 MR. AHART: No.
12 MS. PODZIBA: Ron?
13 MR. HAGER: I just wanted to clarify
14 another point regarding the disproportionality at.
15 This is not generic disproportionality with regard
16 to the Department's process. This is
17 disproportionality only in giving the alternate
18 achievement assessment. So it's directly related
19 to the issue, as Liz said, you know, of the way
20 that the state is administering or ensuring the
21 administration of the alternate assessment.

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1 So disproportionality includes taking
2 that assessment. So I would speak in favor of
3 leaving that in.
4 MS. PODZIBA: Rich?
5 MR. POHLMAN: The one question I have,
6 and this may go back to Liz actually, is that
7 where we have jurisdiction, specifically mine, the
8 District of Columbia, that is very homogeneous
9 with respect to its assessment student population,
10 are there any carveouts in which we can imagine
11 that a jurisdiction -- so like an entire state, so
12 DC being a state that is entirely homogenous might
13 have a very narrow carveout because its
14 disproportionality -- or its disproportional
15 population is also -- its population is also
16 disproportionately filled with students who look a
17 particular way or often have homogenous
18 populations.
19 Does that make sense? I'm trying to
20 like both dance around terms here and get the
21 point across.

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1 I'm sure there's research that's been
2 done on this, but I just know that we had a big
3 push several years ago to reduce the number of
4 students tested on the alternate. We got
5 underneath that cap. And I know there's more,
6 work to be done, but I was concerned that we're
7 going to have another under one percent students
8 to come under this new one-percent cap, and mainly
9 to apply for aware. This disproportionality
10 requirement might kick out.
11 I'm wondering if there's a carveout
12 that we can make that would be satisfactory.
13 MS. PODZIBA: Audrey?
14 MS. JACKSON: I have a big picture
15 question. I don't know if she wants to respond
16 first and then I ask can ask it and then you
17 decide?
18 MS. PODZIBA: You're up.
19 MS. JACKSON: Alright, I'm just
20 wondering what happens if a waiver is not granted,
21 like what are the ramifications?

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1 So, and maybe everyone else knows this
2 and I don't, but I'm just wondering, you know, I
3 can imagine a state like Massachusetts, which is
4 where I'm from right now, it's about one point
5 six, one point seven percent. And it's not going
6 to go down overnight to under one. So I can
7 imagine a situation where some LEAs are
8 appropriately over, and justification resonates
9 with both the LEA and the Department of Ed, but
10 where other LEAs may not have a proper
11 justification. And so on the state level, I'm
12 curious how, if waivers are only granted on the
13 state level and some LEAs are appropriately over
14 and some may be not, what actually happens if a
15 waiver is denied?
16 MS. PODZIBA: So, Patrick, could you
17 answer that?
18 MR. ROONEY: I can try to. I may ask
19 Kay to.
20 I think if a waiver were to be denied,
21 the state would either have to assess fewer

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1 students on the alternate assessment and determine
2 that some students -- in order to process this,
3 they would come in, to figure out -- and work with
4 its districts to figure out and reassign students
5 for different assessments.
6 Or the alternative I guess would be the
7 state would be in the out-of-compliance issue.
8 That certainly would not be our hope or
9 expectation, and if they're out of compliance then
10 there is a range of actions the Department can
11 take against those states out of compliance, from
12 putting a condition on its award, to labeling on
13 the CSI risk grantee, which has potential
14 implications, to potentially withholding funds.
15 I'm not trying to make any sort of
16 threat on what may happen. I don't actually know.
17 There's just a range of actions that we can take
18 whenever a state's out of compliance for any
19 aspect of the law that are the same regardless of
20 the violation of the lack of compliance.
21 MS. JACKSON: I guess I'm just

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1 wondering, where is the lever for positive change?
2 If the waiver is something that's
3 always likely to be approved -- I'm not saying
4 that that's the case -- but if it is, then I'm
5 interested in what the lever for positive change
6 is, if they're always likely to be approved,
7 because you can't supersede the whole IEP team.
8 MR. ROONEY: I was going to point us
9 to -- and that's why it was good to do the whole
10 thing at the beginning, romanette v, on Page 5,
11 where a state is providing a plan for how it's
12 going to address issues and make sure its
13 identifying the right assessment for all kids.
14 If there is some disproportionality or
15 if there is, you know, problems with the way the
16 guidelines are being implemented for some reason
17 and some kids are maybe getting the wrong
18 assessment, that this would be the state's
19 timeline to try to work with its districts to
20 address those issues and then bring the percentage
21 of the kids taking the alternate assessment down.

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1 MS. JACKSON: And so in that case, to
2 Richard's point -- and correct me if I am wrong,
3 Richard -- that maybe you wouldn't need to clarify
4 particular conditions in which, you know, it would
5 be very understandable for a state or entity to go
6 over, because it would likely be approved as long
7 as they're having a thorough plan to address.
8 MS. PODZIBA: Hang on, I don't want
9 this to be a conversation back and forth, because
10 that's --
11 So Richard's suggestion was one item
12 within a discussion of a proposal to delete this
13 section.
14 Tony?
15 MR. EVERS: Yeah, I don't want to leave
16 people with the idea that I'm not concerned about
17 disproportionality in any arena. And it still
18 exists in C on the bottom of Page 4.
19 I'm just saying the issue is prior
20 year. I don't know how many -- I can't think of
21 any. Maybe someone will find that out for me,

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1 where prior actions -- well, it says prior bad act
2 or acts will automatically disqualify a school
3 district from getting a waiver. That's the issue.
4 It's not dealing with
5 disproportionality as you have in C, the second
6 page. It's still there, part of the plan.
7 So I just want to make that clear.
8 MS. PODZIBA: So, Tony, could you
9 perhaps further explain your proposal? Because I
10 understood your proposal was to delete A?
11 MR. EVERS: Correct.
12 MS. PODZIBA: And prior school year is
13 in a couple of other places.
14 So is your concern primarily around
15 prior year and changing something about that, or
16 is it all of A?
17 MR. EVERS: It's all of A, because of
18 A. I don't know how we fix that, because that's
19 in the prior year. I just want to make sure we
20 have been understanding that.
21 MS. PODZIBA: Liz?

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1 MS. KING: So in answer to Richard's
2 question to me, I think I am not comfortable with
3 the idea of a carveout or an exception for a
4 homogenous state.
5 So a couple of different points on
6 that. So DCPS has an awfully bad record of
7 serving children with disabilities, have violated
8 multiple, different years over the years. So I
9 think it's a good example of a place where there
10 are some systemic and structural problems that
11 need to be resolved.
12 I also sort of caution that urbanity,
13 or the presence of children of color, or the
14 presence of low-income children, is not a
15 justification for the overidentification -- or the
16 higher identification of children with the most
17 significant cognitive disabilities.
18 I think that sort of -- there's been
19 some sort of suggestion of that brought up a
20 couple of times throughout the conversation. I
21 think it's a good example of why the cap is in

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1 there and why the oversight is in there, because
2 this is a long-standing challenge that we need to
3 reverse. It's just something that I would
4 caution.
5 The point here that I just wanted to
6 reinforce is that we are talking about what is
7 evidence of a systemic problem. So, to Tony's
8 point, the value of using prior-year data -- and I
9 realize why it is it problematic, because getting
10 in trouble for one year for something that you had
11 done previously is a little bit challenging.
12 Except that the prior year data, I am
13 more comfortable with the standard by which you
14 are being judged by something that you have
15 actually done rather than being judge by something
16 that you might do. And so the prior-year data is
17 something that you have actually done, and in the
18 prior year if there was a problem around this
19 racial disproportionality, then it is like -- and
20 if in the prior year you had disproportionality in
21 the assessment, and you are now exceeding the

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1 one-percent cap, it is likely that there is a
2 relationship and that there is a problem with the
3 way in which you are providing -- either it's the
4 guidance that you are providing to IEP teams for
5 appropriate identification and ensuring that
6 children are not being identified for the
7 alternate assessment on, for example, the basis of
8 race or ethnicity or language status...
9 or the failure to provide to the
10 educators the resources they need for the
11 accommodations they should be providing for the
12 children can be included on the general assessment
13 with accommodations for the training that they
14 need...
15 or whether it is a structural issue
16 that extends beyond disability to include larger
17 racial issues that exist within the state or
18 within LEAs in the state, ensuring that things
19 like implicit bias are not interfering with the
20 identification of children with special ed
21 services. Or things like that.

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1 So I think that what we're trying to
2 get at here, the purpose of the one-percent cap is
3 very much historically rooted both in the
4 overidentification of children with disabilities
5 as being beyond the scope of the general standards
6 and assessment. So we're trying to fix that
7 historical problem, as well as, specifically in
8 the context of this and the language around
9 disproportionality, the overidentification of
10 children of color and Native American children
11 across disability categories, but
12 disproportionately within the intellectually
13 disabled category because of how loaded that
14 category is, and our perceptions as a society that
15 tie race and ethnicity to concepts of intellectual
16 capacity.
17 So that's a big charge, and again I
18 will say this is a very narrow tool to address a
19 much bigger problem, and there are a lot of other
20 things we need to do about making sure that
21 children and educators have the supports and the

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1 training that they need.

2 But I think that that's why,

3 specifically, the limitations around the waiver

4 are so important, making sure that the

5 Congressional requirement around the one-percent

6 cap is rigorously implemented, as well as the

7 callout around disproportionality.

8 MS. PODZIBA: Janel?

9 MS. GEORGE: Thank you.

10 I just want to underscore that context

11 does matter, and it matters specifically for us in

12 the legal realm, at the Legal Defense and

13 Educational Fund, or LDF, we look at it in so many

14 different practice areas.

15 In our policing work, we look at what's

16 called a pattern and practice of discrimination

17 that targets particular groups, particularly

18 African-Americans.

19 In voting rights, we look at a history

20 and legacy of discrimination and exclusion.

21 And in education we also look at the

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1 perpetuation of segregation and the mechanism used
2 to segregate students.
3 In particular in the special education
4 realm, we see that African-American males are not
5 only disproportionately what we call
6 "misidentified," because they tend to be
7 overrepresented in certain categories like ED,
8 emotional disturbance, or intellectual
9 disabilities, and underrepresented in other
10 categories like autism.
11 So for us it's really an issue of
12 misidentification, and it's part and parcel of our
13 country's legacy of institutionalized and systemic
14 racism.
15 We can't deny that. We can't ignore
16 it. It informs the patterns and practices that we
17 see today. If informs the educational
18 inequalities that we continue to see perpetuated
19 in our society.
20 Data tells a story. It is important to
21 have the data. We're not talking about a

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1 retroactive punishment. We're talking about
2 looking at one year of data disaggregated by
3 student subgroups to inform how this provision
4 will be implied.
5 Again, we're not talking about a
6 retroactive punishment. You're just providing the
7 data that will be reviewed by the state in making
8 again what is the significant decision about
9 whether this student will take the alternate
10 assessments.
11 We see again disproportionately for
12 African-American students who take these alternate
13 assessments, they are taken out of the classrooms
14 at higher rates than their white peers.
15 This is what the data and information
16 tell us. So it is important to have the data. I
17 believe that this provision should remain here
18 because it informs the context and discussion, the
19 purpose, the underlying purpose.
20 I think to take this provision out
21 undermines the intent of ensuring that only the

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1 students who need it most are taking these
2 alternate assessments.
3 MS. PODZIBA: Patrick?
4 MR. ROONEY: Thanks.
5 Just to Tony's point, I did want to
6 clarify that the Department actually very often
7 takes into account current and prior actions of
8 the state when they're trying to evaluate whether
9 to approve a waiver request.
10 I appreciate the point you're making,
11 but that is often a criteria the Department uses
12 when trying to determine whether or not to approve
13 a waiver request for a state.
14 MS. PODZIBA: Tony?
15 MR. EVERS: So that's part of the
16 regulation that gives them the authority to do
17 that, or that's just practice?
18 MR. ROONEY: So the statute lays out
19 requirements for a state to submit a waiver. It
20 doesn't lay out the criteria for the Department to
21 then determine whether to approve the waiver or

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1 not.

2 I can think of a couple of examples off

3 the top of my head where, as part of our example,

4 when we looked at, in compliance with IDEA or

5 Title I, we looked at other aspects of the state's

6 implication of the law to determine whether a

7 waiver was appropriate or not?

8 MR. EVERS: Can I continue?

9 MS. PODZIBA: Mm-hmm.

10 MR. EVERS: This is a huge issue. I

11 don't just view it as a waiver.

12 Currently you have rules of review, I

13 think review, final review of the IDEA. You deal

14 with the issue of disproportionality there? If

15 so, what is the distinction between that and this?

16 Maybe there's no distinction.

17 So if it's a big deal, and I think it's

18 a huge deal, wouldn't it be better dealt with

19 there than here? I mean, this is a microcosm, a

20 small microcosm of a larger issue.

21 MR. ROONEY: I'm happy to address that

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1 issue as actually Alvin raised that point too
2 earlier this morning when we first brought up the
3 question of disproportionality.
4 IDEA asks for data of
5 disproportionality but it focuses on
6 identification of students with disabilities,
7 placement, and disciplinary actions.
8 It doesn't focus on kids taking the
9 alternate assessment based on alternate
10 achievement standards.
11 So, to the extent this is, you know, an
12 issue that we want to think about or consider,
13 it's not captured elsewhere in IDEA or the current
14 regulation or the statute.
15 MS. PODZIBA: Aaron.
16 MR. PAYMENT: So in our tradition we
17 tell stories in order to fully have an
18 understanding, so I won't tell you a really long
19 one...
20 But I do want to share two things. One
21 is, my nephew -- and this is interesting, because

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1 I have to wear several hats. One hat is as an
2 uncle, the also another hat is as the former
3 president of our school board, and we have a very
4 good school, very good school board. As an
5 administrator for my tribe, I know what it's like
6 to actually have to follow regulations that are
7 unfair, or seemingly unfair.
8 But in the case of my nephew, who is
9 high-functioning autistic, he was misclassified as
10 emotionally impaired, chronically misclassified as
11 being emotionally impaired. The other guidance
12 counselors indicated he was high-functioning
13 autistic, and I had to fight a social worker from
14 our own school who kept moving him in this
15 direction, while speaking to my sister and telling
16 her that she caused it because she was an
17 alcoholic. And that's a common practice. It's
18 not unusual. It's a common practice.
19 So, we have fixed that and our schools
20 now accommodate. But we have the same struggle,
21 because you have only so much money but you also

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1 have to try to address the issue.

2 But I also wanted to say something on

3 the importance of data, local data. So the local

4 school system, we get Impact Aid funds in our

5 public school system, so they're required to do an

6 annual meeting on the reservation for the largest

7 amount of money that flows from the federal

8 government on Impact Aid to the reservation;

9 Impact Aid, also for federal lands and Coast Guard

10 and all that.

11 So, one of the meetings they came and

12 presented at our reservation, they are bragging

13 about the increased number of graduates. And they

14 were very proud of themselves, that they sent a --

15 we call it sending a brown face to do the dirty

16 work. They sent a media person to come and

17 present the data to us, who worked for them.

18 So anyway, I asked the basic question:

19 Statistics relative to what? The graduation

20 number is not the same as your graduation rate of

21 performance.

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1 And so we compelled them to -- we paid
2 for a study that they then did to go look under
3 the cohorts and look at two cohorts statistically
4 and see the actual records and determine the
5 graduation rate.
6 As it turns out, the graduation rate
7 was forty-seven percent, consistent with the state
8 graduation rate, consistent with the federal
9 graduation rate for American Indians. So this is
10 why this is so passionate.
11 So, because we were able to access
12 local data, we were able to then get a little bit
13 of carrot on a stick, a little bit of shaming,
14 because they needed to be shamed. They were
15 accepting the fifty-percent percent dropout rate
16 and transferring us to nonprofit preps at a rate
17 of three times that of our general population.
18 Had we not done this, we would have never known
19 that. We would never had had that actual data.
20 But the good news, the good side of the
21 story is I don't believe they were ever doing any

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1 of that purposefully, and I believe once we
2 created the effort to look at the local data as a
3 team, things improved.
4 We also didn't leave it to them for
5 referral. We just referred to our own school. Now
6 all the students want to get into our school,
7 including all our native people who go to charter,
8 as well, all the doctor's and lawyer's kids are
9 all wanting to come to our school. We're the
10 School of the Academy of Excellence. But that
11 combination of factors improved the environment
12 for education for our children.
13 So I think, as an advocate, as an
14 Indian person, I want to know whatever data I can
15 in order to advocate for -- not to shame, but to
16 work in collaboration as a team with public
17 educators to look at and fix those areas.
18 I think more likely than not they will
19 be likely to fix it once they understand it and
20 know it.
21 So this is why I think access to this

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1 data is important.

2 MR. PODZIBA: Alvin.

3 MR. WILBANKS: I certainly did not

4 suggest we not look at data. I certainly did not

5 suggest that we really be aware of what made up

6 the data. But I contend disproportionality can

7 occur apart from any reference to race,

8 discrimination or whatever. It can simply be a

9 criteria of being applied fairly. I think this

10 year back of review, I don't see a reason for it.

11 But without getting into personal

12 collaboration here, I think we need to decide if

13 this is the selection of students with significant

14 cognitive disabilities, to keep the appropriate

15 educational placement in as it should be kept, and

16 I think whatever that criteria is, I believe we

17 are well prepared today that, if not, they should

18 be, and I won't make a federal mandate other than

19 what we already have.

20 MS. PODZIBA: Tony?

21 MR. EVERS: Probably my last comment on

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1 this, but, in these regulations around getting a
2 waiver, again it's my concern that we almost
3 automatically disallow districts that are
4 training. And you said that, Kerri. It's about
5 moving forward. C at the bottom of the page, it
6 talks about disproportionality, C at the bottom of
7 Page 5, it talks about disproportionality. So I
8 don't think there is any lack of sensitivity about
9 it.
10 The problem I have is that it pretty
11 much automatically suggests that a waiver is not
12 going to be given. And I think that's a problem.
13 I think Congress generally sought to take it all
14 away. The Secretary has even put conditions on
15 waivers, generally speaking. I think this is a
16 large problem.
17 I don't believe C at the bottom should
18 be eliminated. I don't believe that C at the
19 bottom of Page 5 should be eliminated.
20 Clearly we have disproportionality
21 issues and rules that are broader. I'm trying to

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1 understand this issue. I'm just saying in the
2 small world of waiver approval considering, using
3 past data is not appropriate.
4 MS. PODZIBA: So it's clear that there
5 is not consensus to leave it in, and there is not
6 consensus to remove it. So that means -- hmmm.
7 MR. EVERS: Change it.
8 MS. PODZIBA: So I'm wondering, Tony,
9 if this is a first year, I'm just throwing it out
10 as an attempt to change it, if in the first year
11 it's not prior year, but it's the first year of a
12 waiver, so that in the second year then you have
13 the information that supported the first year
14 waiver... So this kind of constraint would relate
15 to a second year of a request for a waiver,
16 because a waiver had already been granted based on
17 data....
18 Is that a beginning of a way of
19 changing this to make it acceptable to everyone?
20 It's essentially giving states a year?
21 Aaron?

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1 MR. PAYMENT: Again, based on the
2 principal that I think most will change and
3 improve if given the opportunity, I think that
4 gives them the opportunity. And I would prefer it
5 not, but of that gets us to consensus, I think
6 that that makes sense.
7 MS. PODZIBA: Other comments about
8 that?
9 Liz?
10 MS. KING: Yeah, a couple of different
11 comments.
12 First, just a general reminder that
13 students with disabilities are general education
14 students first. So, while they have IDEA
15 protections, they are fully included in the ESSA.
16 This provision is about their inclusion
17 in the ESSA, which is why the IDEA NPRM on
18 disproportionately apply, although the IDEA NPRM
19 on disproportionality is just further evidence of
20 systemic problems in the over identification of
21 children of color as having disabilities, and the

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1 likely continued over identification without
2 intervention.
3 I think the idea of a waiver is that
4 there is a law that applies to everybody, and now
5 this part of the law that applies to everybody
6 does not in a limited instance apply to you; which
7 is a pretty serious standard to go from, This law
8 applies to a state, to This law does not in this
9 moment in this way apply to the state. So I think
10 it is fair to have rigorous standards for a waiver
11 approval.
12 Congress could not have required that
13 there be a one-percent cap. Congress could have
14 required the Department, without review, to accept
15 all requests for waivers. Congress could have in
16 a lots of other ways made this meaningless, and
17 instead Congress did not.
18 There are statutory requirements around
19 this, including the underlying requirement that
20 not more than one percent of children be assessed
21 on the alternative assessment.

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1 So I think that again it is my concern
2 always when we're talking about relative to add
3 one year, or just to add two years, or just to add
4 three years, that child who goes to third grade is
5 now in sixth grade and now they're in seventh
6 grade, and, oh, now they're leaving high school.
7 So I think that we just have to be clear that when
8 we're talking about one or two years is a long
9 time in the life of a child in school.
10 And my concern about the prior-year
11 data, I think the issue here is around the
12 proactiveness about it.
13 So I would like to hear more, Tony,
14 about is there an alternative way to identify
15 structural disproportionality as a structural flag
16 around race and ethnicity and people with
17 disability. So is there an alternative to that.
18 And then I would say to Susan, sort of
19 the policy point argument that Susan is trying to
20 make, I would say that the concern I have with
21 Susan's proposal, the intention would be that a

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1 waiver may -- in the event that a waiver is
2 reasonably granted for one year, our hope is that
3 waivers not be granted because they not be needed
4 because the cap not be exceeded.
5 Our hope is that, in the event that the
6 cap is exceeded, that a waiver be granted because
7 the reason the cap was exceed met all of these
8 expectations and requirements and that that
9 condition would continue not to be the case.
10 So we are hoping against multiyear
11 waivers, although we certainly realize they are
12 allowed under the law.
13 But I think the idea here is that we
14 are trying to be very, very careful that when the
15 Secretary determines that this federal law written
16 by Congress does not apply; that it is only a
17 limited instance when that happens.
18 MS. PODZIBA: Kerri?
19 MS. BRIGGS: A slightly more general
20 point -- I'm struggling with the timing of a
21 proactive waiver and its anticipated approval.

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1 Submitting it ninety days before the testing
2 windows and I'm trying to think in my head when
3 IEP teams need to make decisions about kids -- I'm
4 just sort of struggling with who this is being
5 matched up.
6 Because let's say you take it under
7 IDEA 1.5 -- no, 1.3, that triggers some days a
8 whole bunch of IDE teams coming to testing for one
9 year.
10 For me there's something to consider
11 about receiving data when they are being captured
12 and collected and brought on the very important
13 issue of the one percent cap.
14 MS. PODZIBA: Yeah, so you're you in
15 the past and future at the same time somehow.
16 MS. BRIGGS: Yes.
17 MS. PODZIBA: So I'm getting what
18 you're saying. Ok.
19 Derrick -- I'm sorry, Lara.
20 MS. EVANGELISTA: So, speaking from the
21 perspective from a school that deals with a

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1 relatively homogenous population, given that
2 they're all newcomer ELLs, and I think what
3 concerns me about this is that last piece about it
4 only looks likes you're talking about one thing.
5 You know, we're a school that our
6 graduation rate, our four-year graduation rate has
7 consistently been doubled out of the city and of
8 the state. Most of our students are going on to
9 college. We have a great reputation in New York
10 City for serving our population.
11 But we have been very negatively
12 impacted by the fact of looking at just one
13 measure for our school, because on the state
14 level, we were actually for a while a focus school
15 because of all of the overlapping subgroups. All
16 of our ELLs are all economically disadvantaged.
17 All of our Asian students are also ELLs and
18 economically disadvantaged. So that concerns me,
19 that piece.
20 So, I wonder, if this is left in, that
21 it could say something like "demonstrated by

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1 multiple measures such as but not limited to
2 disaggregating the state level data," so that when
3 people are submitting, you know -- when LEAs are
4 submitting their justification for why they're
5 going over the one percent and they're explaining
6 the circumstances, that that can also be looked at
7 for the waiver at the federal level.
8 MS. PODZIBA: Derrick?
9 MR. CHAU: I'm just trying to think of
10 a happy medium here and offering up a solution,
11 because you have definitely different sides to
12 this issue. And I think it sounds like people are
13 fine with -- members of the committee are fine
14 with including a plan and timeline, and I
15 definitely want to emphasize that this isn't going
16 to happen in a year, and having that expectation,
17 an equal expectation across all states and all
18 districts is unfair, inherently unfair.
19 Speaking from the second largest
20 district in the country, and asking us to do
21 something like this where we will not

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1 significantly increase, or we will not
2 disproportionately -- we've been working on this
3 now.
4 I like what Lara offered about multiple
5 measures, and if we were to take a lot of this
6 language from sections ii and iii and put that
7 into section iv as sort of a consider as part of
8 their plan and timeline, "consider data multiple
9 measures if applicable or necessary" to address
10 some of these issues.
11 I think it's unrealistic to expect
12 these schools and LEAs to change, and I'm also
13 thinking about these single-school LEA charter
14 schools who are going to be asked to make some of
15 these changes very quickly as well. So I'd just
16 like to put that out there.
17 I think it's fair to ask for a plan and
18 a timeline, for this, and I would ask for time,
19 because all of us are very different. Some of our
20 states are very, very large; some of our states
21 are very, very small, and each district is going

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1 to have to offer up some steps, and I think it's
2 fair to ask for those steps, and as long as -- I
3 would hope that as long as there is evidence that
4 we're moving forward in the plan for this that the
5 waiver would be granted moving forward.
6 MS. PODZIBA: Derrick, could you
7 explain the exact proposal that you were making.
8 MR. CHAU: So there are pieces around
9 disproportionality, around the students assessed,
10 the percentage of students assessed.
11 MS. PODZIBA: So are you referring to
12 Paragraph A?
13 MR. CHAU: A and B. I'm looking at
14 aspects around the next section that talks about
15 "not significantly increasing" or -- I mean, I'm
16 very concerned about that language there and that
17 word "not disproportionately assessed" -- I think
18 Tony broached those issues before =as well. That
19 seems very finite, very absolute, and I'm
20 concerned about setting an absolute equally across
21 all of those districts is unfair.

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1 I'm wondering if we could -- somehow we
2 could take those pieces, put that in the plan and
3 ask for states to address those pieces if
4 applicable or necessary as well.
5 I think there's an assumption here --
6 I'm very concerned when in the regulations there's
7 an assumption that things are working poorly, and
8 they not might be, and it might be the case that a
9 single school, single LEA charter school may be
10 proportionate, but they're still above.
11 And so, I just want to throw out that
12 need for flexibility.
13 MS. PODZIBA: So is the proposal -- I'm
14 just trying to understand the proposal, that the
15 timeline and plan, what's now paragraph romanette
16 iv on Page 5, become the primary focus, and that
17 these parts -- that the state would need to show
18 how these requirements are integrated into its
19 plan.
20 MR. CHAU: Yes.
21 MS. PODZIBA: In order to get the

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1 waiver.

2 Ok, there are a lot of cards up.

3 Patrick?

4 MR. ROONEY: So I don't know that we

5 need to spend a lot more time on this. I think

6 we've heard a lot of concerns. This may be

7 something that we could table until the lunch

8 break, and I could consult some colleagues and

9 kind of see what advice they might have for me ,

10 honestly.

11 But there are a couple of things I

12 wanted to say that I think are worth saying before

13 that.

14 Section romanette ii is the piece where

15 we ask for data, and it's the only one where we

16 actually ask for a specific data about what is

17 happening in the state; romanette iii is

18 assurances from the district, and romanette iv is

19 just the plan and timeline.

20 I think from our perspective, the plan

21 and timeline feels very forward-looking and it

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1 could be many years while the state is trying to
2 work with its districts to make sure they're
3 providing the right support for IEP teams to
4 identify the right assessment for students.
5 I think there's been a lot of data for
6 state-represented plans and timelines and then
7 reality happens and they don't quite hit them.
8 Romanette ii is the piece where we
9 actually get the data to look at what's happening
10 with the state and we make the determination.
11 I think it's hard for us to totally
12 divorce actually looking at data and making sure
13 that this is appropriate now to approve for the
14 state without also -- you know, separate from the
15 other pieces and just asking for a plan and
16 timeline.
17 I have one question, Tony, for you,
18 that I wanted to see whether is reasonable. I
19 think there are some discussions we can talk about
20 with my colleagues.
21 But to the point I'm looking backwards

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1 for you guys, you're being held to prior actions
2 that don't necessarily reflect what's happening in
3 the current year. We struggled a little bit with
4 romanette ii before the test window that the state
5 would be able to submit that data to us. So we've
6 asked for it ninety days ahead of time. It seemed
7 like a reasonable time that the state could have
8 accumulated that data and submitted it to the
9 Department.
10 Could the states submit current-year
11 data as part of that request? I'm not asking you
12 to say whether that's a good idea or not. I'd
13 like to have a little time to think about that.
14 You're welcome to say that if you want.
15 Would that be possible, even from a
16 logistical standpoint, to submit, when you submit
17 your data, when you submit just request to say,
18 Here is the percentage of kids who have taken
19 alternate assessment, and Here it is broken down
20 at the state level.
21 MR. EVERS: Maybe. I mean, it's not

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1 going to read -- it's whether we could.

2 MR. ROONEY: Mm-hmm.

3 MR. EVERS: I mean, this year, our

4 complete data was finally that data got back from

5 the different contractors and vendors.

6 And so, I'm not sure how that fits in,

7 certainly before lunch. I would think we would

8 like to know who might be exceeding that ninety

9 days out. I'm not exactly sure if we have the

10 data to give you, or we don't want to give you

11 that. So it's an unknown.

12 MS. PODZIBA: So I take your point

13 about having lunch. I've got four comments. I'd

14 like to get those comments in and then we'll break

15 for lunch.

16 So Aaron, you're up.

17 MR. PAYMENT: Alright, so we have to be

18 realistic in what states can do, and let's

19 separate the issue of what can they do timely

20 versus the need to be able to report this

21 information.

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1 So is it possible to set a transition
2 plan or new publication plan with a date by which
3 that can happen? Or, would it be preferable -- so
4 like we do a lot of compacting with programs, and
5 then we get to set the date based on what we know
6 our concerns are and how long it will take and all
7 of that. So maybe, when they submit their initial
8 plan, they include the date by which they will
9 comply with this information. It has to be
10 reasonable, obviously. It can't be when the next
11 laws pass. So maybe if we did that...
12 So those would be some alternatives
13 that would be an implemented timeframe of maybe a
14 year or two, a couple of years, and the
15 alternative would be to compact, to have the
16 states when they submit their initial response to
17 the law, to include the timeline by which they
18 would be able to comply.
19 MS. PODZIBA: Thank you.
20 Thomas.
21 MR. AHART: Yeah, just, I like

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1 Derrick's approach. There seems to be a lot of
2 overreach in most of the reg that's putting
3 specific requirements on LEAs, that the
4 regulations or the text actually doesn't support.
5 So looking at it in terms of a plan, a
6 state plan, because the law really speaks to the
7 state having a plan. And so, looking at it from
8 that point, rather than a whole bunch of specific
9 holiday requirements, and I think it could be more
10 fruitful.
11 MS. PODZIBA: Liz?
12 MS. KING: Yeah, a couple of different
13 things.
14 I would just say, fact that people have
15 been dealing with this for years means greater
16 urgency, not less. I mean, folks have been
17 transitioning since 2002, or arguably since 1994.
18 So they have had their time. I could get all
19 kinds of quoting, all sorts of civil rights things
20 about timeline and justice and denying, delaying
21 and that type of thing.

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1 I did have some questions. I'm not
2 sure why this is sort of plain text, "multiple
3 measures" language. I don't know what multiple
4 measures of disproportionality would be. So I did
5 want to flag that and ask for some clarification
6 around that.
7 I think there is also some confusion
8 about the school level versus the LE level versus
9 the state level.
10 So in this context, we are only talking
11 about the state exceeding, which means there can
12 be considerable variance among and within LEAs
13 about what's going on, and that that happens
14 separately and is addressed separately.
15 So for example a single-school LEA that
16 is a segregated school serving exclusively
17 children with disabilities, that would be handled
18 under the LEA part.
19 I think, and I will be told by my
20 constituents if I'm out of line here, but I
21 suspect that, giving a state the option of even

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1 considering a prior year would be something you
2 would be something we need to come through with to
3 demonstrate which data they would prefer. I think
4 that would be ok.
5 And then the other sort of larger
6 question I wanted to ask, to better understand
7 sort of where everybody is coming from and how to
8 meet everybody's constraints is, in my own mind I
9 can only imagine examples of where
10 disproportionality on the basis of race, ethnicity
11 or family income would not be excusable and would
12 not be a worthy justification of a waiver.
13 And so I'm interested in hearing if
14 other folks have examples of things that they
15 think at the state level, where the
16 disproportionality would be consistent with the
17 requirement and the intent of the law and where
18 that disproportionality would make sense.
19 So it would be helpful to hear some of
20 that.
21 MS. PODZIBA: Aqueelha.

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1 MS. JAMES: I'm just thinking about at
2 the school level and the amount of work that the
3 LEA team will have to do with certain time
4 constraints and what that means for students needs
5 not getting that because we're so bombarded with
6 adult business versus student business, and I just
7 wanted to put that in progress here.
8 MS. PODZIBA: Ok. We're going to break
9 for lunch. This is clearly a place where we're
10 going to need to get creative in order to bring
11 everybody into a consensus on this. I think a lot
12 of key points got raised, and I hope people can
13 hold all of those in mind as you think about what
14 to do.
15 One thing I do want to say, Thomas, and
16 this gets to your point, so this could be very
17 minimal. However the Department will decide how
18 it's going to grant waivers. And so in some ways,
19 this is an opportunity to help the Department
20 determine how it's going to grant waivers in a way
21 that fits better with the needs of the students

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1 that you're all here to assist.

2 So we'll break for lunch.

3 Patrick, did you have a comment before

4 we break?

5 MR. ROONEY: No. One logistic point,

6 for the negotiators, you have a room, if you'd

7 like to go and take your food and go back to the

8 room, it's 1W109. I think it's the room you were

9 in yesterday.

10 MS. PODZIBA: Thank you. So let's be

11 back at 1:30, 1:30.

12 (Whereupon a luncheon recess was taken

13 at 12:35 p.m.)

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

2 (Whereupon at 1:40 p.m. the Negotiated

3 Rulemaking session resumed.)

4 MS. PODZIBA: Welcome back.

5 Patrick?

6 MR. ROONEY: Yes. Hi, everyone.

7 Welcome back. I hope everyone is recharged and

8 refreshed after the lunch break and ready to dig

9 back in, and hopefully we have some coffee to wake

10 us up.

11 I would like to propose that the

12 conversation this morning was very rich and we

13 heard a lot of the comments. I know we didn't get

14 through all of Issue Paper 4B, but I think we

15 heard enough to hear the concerns that people have

16 around the language that's there that the

17 Department need to take back and think about what

18 that means for proposal and how we might

19 structure, or whether we structure slightly

20 different that we can bring back for you guys to

21 consider.

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1 So in the interest of time, I do want
2 to make sure we have the chance to get through all
3 of the assessment issues before the end of the day
4 today.
5 The beginning of the day felt like it
6 was ok. Now I'm feeling I hope we can get through
7 all the assessment papers. I was hoping we could
8 move straight into Issue Paper 3 if that's ok. If
9 we have time we could try to circle back if people
10 raise additional questions in 4B. But just in the
11 interest of time we make sure we will raise
12 questions on all of the issues papers, we will
13 jump ahead to Issue Paper 3.
14 MS. PODZIBA: Ron?
15 MR. HAGER: Just as a placeholder m
16 nothing happened right now or today, but I thought
17 to might be helpful for the expert, Marcus, to
18 talk about what does exactly disproportionality
19 mean, how does it apply in the context of the
20 alternate achievement assessment.
21 There seems to be we have a lot of

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1 confusion there, so it is may help us to
2 understand the issue. But I wanted to kind of
3 have a placeholder there that it might be a good
4 idea to have that suggestion. I just wanted to
5 put that out there.
6 MS. PODZIBA: The Department wants to
7 take a look at this and have some internal
8 discussions. If we have time at the end of the
9 day, then well go back into it.
10 MR. ROONEY: I certainly appreciate we
11 did not get through all of it, and I know there
12 were questions people had raised on sections of
13 it. I think we heard a question in the discussion
14 which makes us think think that we may need to
15 reframe some aspects of it, and that may be more
16 fruitful to wait until then, if that's what that
17 looks like, if that is amenable to everyone.
18 MS. JACKSON: Just curious, whether we
19 will be deciding or discussing if we are going to
20 come back for the further session. I know that
21 right now I'm probably jumping the gun, but

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1 thinking about timing and I'm just curious about
2 when we will --
3 MS. PODZIBA: So I think the thought
4 was we would get through all the issue papers
5 once, so probably tomorrow afternoon.
6 MR. ROONEY: Ok. So turning now to
7 Issue Paper 3, this is the Locally Selected
8 Nationally-Recognized High School Assessment
9 Status. It's the new aspect of the ESSA that did
10 not exist prior to NCLB.
11 Just as a refresher to remind everyone,
12 absent this permission, the requirements were that
13 states develop state assessments in reading
14 language arts and mathematics that includes and
15 integrates grades three through eight and then
16 once in high school, and that the state
17 administers the same assessment to all students in
18 those grades, notwithstanding the one percent of
19 kids who are taking the alternate assessment. So
20 this new part of the law would permit states to
21 permit districts to give a nationally-recognized

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1 high school assessment.

2 We spent a bit of time discussing what

3 needs to be a nationally recognized assessment,

4 but there wasn't a proposal for how to define

5 that. But I think we heard some language about

6 what those might be, and I think we tried to take

7 a pass at defining it, because we think it would

8 be helpful to the field to know what constitutes a

9 nationally-recognized high school assessment. So

10 actually I'd like to work backwards slightly on

11 this on the reg text because I think that would

12 help set up the rest of the text.

13 So if you would turn to Page 4 of the

14 issue paper, the very bottom, D, is where we

15 suggest for this group's consideration and

16 discussion a definition of nationally-recognized

17 high school assessment.

18 And a further reminder from the last

19 session, one of the things that was laid out in

20 the report language from the Congressional

21 committee that passed the ESSA that accompanies

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1 the bill was they specifically referenced ACT and
2 SAT. And so I think that was probably in our mind
3 to try to cover this definition.
4 So it's an assessment that's
5 administered in multiple states and used by
6 institutions of higher education in those states
7 for either the purpose of entrance or placement
8 for post-secondary education and training programs
9 or courses of study, to try to create an
10 expectation of this would be an assessment that
11 both is administered in multiple states and then
12 actually has been used by the universities or
13 secondary training programs for placement or
14 entrance requirements.
15 So now, going back to the proposal, I
16 wanted to -- we can stop and take some discussion
17 on the topic.
18 MR. EVERS: Just a question. I just
19 have to understand, at the bottom of Page 4 and
20 five, is that where this definition is that you
21 were just referencing?

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1 MR. ROONEY: Sorry, yes.

2 MR. EVERS: It just seems oddly put. I

3 have "and used by institutions of higher education

4 in those states for the purpose of entrance in

5 post-secondary institutions or course of study or

6 for placement through courses of post-secondary

7 education programs or courses in study".

8 I mean, does that make sense to

9 everybody?

10 MR. ROONEY: Let's look at it, because

11 we repeat the phrases that it's either -- the two

12 pieces are they're either used for entrance or

13 they're used for placement, and then we repeat it.

14 There's probably an easier way to phrase this.

15 MR. EVERS: That's fine.

16 MR. ROONEY: That's what we were trying

17 to do, trying to think about ways to structure the

18 wording and make it a little less onerous.

19 MS. PODZIBA: Lara?

20 MS. EVANGELISTA: Yeah, I guess, I know

21 you said it was referencing the statute, but I

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1 have a lot of questions about, you know,
2 specifically putting this in the regulation that
3 it needs to be the test for the purpose of
4 entrance or placement, since most of those tests
5 don't have accommodations for ELLs. These
6 assessments are supposed to be measuring the
7 standards, but the assessments like the SAT and
8 the ACT weren't exactly designed with that in
9 mind.
10 So to put it specifically here I think
11 really limits the kind of assessments that we're
12 here to look at.
13 MS. PODZIBA: Derrick?
14 MR. CHAU: I would agree, I think the
15 addition of the piece around "institutions of
16 higher education" may be problematic, since we
17 don't have any control over that and they tend to
18 change their minds about that without consulting
19 the school districts.
20 So I wonder if we might change that
21 language somehow to maybe be more around "for the

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1 purposes of demonstrating competency and mastery
2 under state and/or national standards," something
3 along those lines, "and/or for admission into
4 those post-secondary education training programs,"
5 something disconnecting it from -- I wouldn't want
6 the test to be whether or not institutions of
7 higher education are using this. I think that's
8 adding and then it would limit the assessments
9 that would be available as options.
10 MS. PODZIBA: Ron?
11 MR. HAGER: We actually concur. Go
12 figure.
13 But I thought in terms of the
14 definition of "national assessment," I thought we
15 could add in, so everything at the top of Page 5,
16 you've got "states" and then you've got the "and".
17 Basically eliminate after the "and" but then
18 "provides comparable data across states," which I
19 think captures more of the idea of a nationally
20 assessment. You have the "nationally
21 administered" but also provide "comparable data".

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1 That's what our suggestion would be, and not
2 really formally connecting it to what happens with
3 it. I mean, it can be used for this purpose, but
4 we don't feel it should be limiting it to that
5 purpose.
6 MS. PODZIBA: Alvin?
7 MR. WILBANKS: A little bit of argument
8 on that. But I thought it would be good to ask
9 Patrick if the Department is aware of the three
10 states that were approved for this, Connecticut
11 and New Hampshire and Maine, and I think two other
12 states that used other than their assessment. Are
13 you all aware of the cap for them?
14 MR. ROONEY: So I'm happy to answer
15 that, and it's a good question. It's a little
16 tangential, so to clarify, this is about
17 permission for districts to use an assessment
18 other than the state's assessment.
19 So this would be, you know, Wisconsin
20 has test A and that's the test they give to all
21 high school students, and Madison, Wisconsin asked

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1 to use the SAT instead of the test A, and this
2 would be for then that one district that was
3 approved, and in that case take a look at the
4 criteria. Then they would give that test while
5 everyone else in the state is still taking test A.
6 Your question is about states that have
7 picked the SAT or ACT as the statewide test that
8 they give to all kids? That is totally allowable
9 under the law right now that states can select
10 whatever assessments they think are appropriate
11 for their students and then make sure that they
12 assess all their kids on that same test.
13 That is then subject to the peer review
14 requirements that they make sure that the test is
15 aligned with the state standards, that it's a
16 high-quality test that has technical rigor,
17 according to the National Professional Testing
18 Standards, and the Department uses external peers
19 to help evaluate the quality of the test to
20 determine whether it meets the requirements laid
21 out in these regulations.

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1 So, it's a slightly different thing for
2 a state that says, Our high school test is the SAT
3 versus this requirement, which is permitting --
4 the state permitting some districts to take a test
5 other than the test everyone else is taking.
6 I do want to kind of add one caveat to
7 some of the comments that we've heard, but I think
8 it's an important distinction for us, is that the
9 nationally-recognized high school assessment, that
10 if the description you were giving is just a test
11 given in multiple states as a national assessment,
12 but I think there's something like a recognition
13 that is why we thought it made sense to talk about
14 placement or entrance in the post-secondary, that
15 this is a test that is not only a testing being
16 given in multiple states, but is being used for
17 particular purposes to make sure students have
18 attained an expected level of student achievement
19 that would be slightly different than just a
20 testing given in multiple states; which is why we
21 tried to impose this definition and then tie it to

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1 higher education, entrance score, placement or
2 courses of study, training programs.
3 MS. PODZIBA: So in terms of the
4 proposal that's on there, Patrick, is "multiple
5 states" -- would you replace that with "is used
6 nationally"?
7 MR. ROONEY: No, sorry. I would keep
8 "multiple states". I don't think I heard anyone
9 else changing that.
10 I think "nationally" then makes it
11 sound like everyone has to take that test. So I
12 think multiple states is ok.
13 I think I'm reacting to the idea of
14 replacing or eliminating the entrance or placement
15 in higher education or training programs.
16 MS. PODZIBA: Ok, so you don't want to
17 delete that, which is the proposal on the table?
18 MR. ROONEY: Correct.
19 MS. PODZIBA: Delia?
20 MS. POMPA: The placement of a
21 definition at the end makes me ask whether B at

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1 the top of Page 3 applies to it, under "state
2 approval," and whether it does or doesn't, I would
3 like it to be linked in and mentioned in the
4 definition.
5 I think that would take care of some of
6 the issues and concerns I would have about it
7 focusing on higher ed and not on what happens in
8 high school and the standards.
9 MS. RIGLING: Just to the point, I
10 think it doesn't matter where the definition is
11 placed. I think once we have a definition it
12 applies any time the words "nationally-recognized
13 high school assessment" are used. So it shouldn't
14 matter once we have the definition.
15 MS. POMPA: Ok, then I would just
16 recommend then that there be emphasis in the
17 definition that the requirements under B apply.
18 MR. ROONEY: So I think I hear your
19 point, Delia. To the way this regulation I think
20 would read, a state may approve a district to use
21 a nationally-recognized assessment that meets this

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1 definition provided it meets all the other aspects
2 of the full component in this issue paper, which
3 would include A, B and C, and that would be how
4 the state -- the state would have to make sure
5 that whatever nationally-recognized assessment
6 it's picking, it meets all aspects of the
7 regulation.
8 MS. PODZIBA: Ok, so I'd like to go
9 back to the definitions, see if we might be able
10 to get closure on that.
11 Patrick said the Department wants to
12 sustain the -- I'm sorry, it's really hard for me
13 to read behind me, sustain the part about
14 "post-secondary education".
15 Patrick, what about the addition of
16 "for purposes of demonstrating mastery and
17 provides comparable data across"...
18 I think, Ron, that was your proposal
19 and we missed a word on that.
20 MR. HAGER: No.
21 MS. RICKER: It was Derrick.

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1 MR. CHAU: "For purposes of
2 demonstrating competency and mastering state and
3 or national standards".
4 I was happy with keeping the remainder
5 of that, "that does present admissions into
6 post-secondary education, training programs or
7 courses of study". And the remainder kind of
8 leaves it open.
9 MR. ROONEY: Sorry, can you repeat what
10 you would delete.
11 MR. CHAU: So I say deleting just the
12 "used by an institution for higher education in
13 those states".
14 I'm fine with the rest of that. I
15 think the rest of it is fine, because it leaves it
16 open to allowing for states -- a district to
17 choose something that may not be used by an
18 institution of higher education but it might be
19 for a training program, it might be for other
20 places, as well.
21 MS. PODZIBA: Lara?

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1 MS. EVANGELISTA: Yeah, I guess I just
2 want to keep it open enough. I mean, you also
3 have exams like the IB or the AP. Where does that
4 fall in? You know, like that's not necessarily
5 used for the purposes of entrance into -- I mean,
6 it's a factor that's admitted.
7 And then I feel like also, are we
8 limiting, you know, different kinds of assessments
9 that may come down the pike later on. You know
10 you have states that are fully competency-based
11 states now that are trying to develop assessments
12 around that performance parameters.
13 I just feel like with keeping just with
14 the placement piece is a problem. We have
15 "and/or," "still be included," then I'd be fine
16 with it.
17 MS. PODZIBA: Patrick, do you want to
18 comment on that? I don't know if your sense is if
19 this is meant to be very narrow or if it can be
20 broad.
21 MR. ROONEY: So my sense of it is it's

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1 a little narrow. I would say that I think IB and
2 AP can meet this definition since you do get
3 college credit if you score at a certain level on
4 either of those tests that that would encompass
5 placement.
6 It's not an entrance requirement, but
7 higher ed needs placement as well. I think those
8 tests would meet this definition as we proposed
9 it.
10 I do think we have a -- notwithstanding
11 the rest of those, and I'm still trying to get my
12 head around it, there are no national standards,
13 so we need to make sure we leave that part of it,
14 so we don't want to indicate that there are
15 national standards.
16 MS. PODZIBA: Kerri.
17 MS. BRIGGS: I was going to highlight
18 the awareness of national standards, and also the
19 comparable data across states makes me kind of
20 weary for the same reasons we just struck out
21 national standards. I don't know that that's a

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1 necessary inclusion. It could be used in several
2 states means the data can be compared across
3 states, but I don't think that's something --
4 MS. PODZIBA: So you're proposing a
5 friendly amendment to strike.
6 MS. BRIGGS: I mean, now we're quickly
7 getting into a place where there's lots of
8 examples once you get into the purpose of
9 demonstrating mastery of standards or fees for
10 entrance into higher ed or placement in higher ed,
11 like --
12 MS. PODZIBA: So, give me a specific
13 proposal that will help us.
14 MS. BRIGGS: Well, "strictly provides
15 comparable" --
16 MS. PODZIBA: Is that acceptable to
17 Derrick? I know that was your proposal.
18 Kerri's -- that was yours?
19 MS. BRIGGS: That was mine.
20 MS. PODZIBA: Sorry, still waking up
21 after lunch.

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1 MR. HAGER: We always like data, so I
2 was going to put that out there for now. That was
3 mine.
4 MS. PODZIBA: So I'd like to try and
5 close on this. It's not like do we like it. Do
6 we need it. Do you absolutely need that in this
7 definition?
8 Janel?
9 MS. GEORGE: I think that we do, and
10 recognizing a point, I do think it's important
11 that we don't have national standards, but how do
12 we have an apples to apples comparison? We need
13 to ensure that students are meeting a standard.
14 And I get that it's not the same thing.
15 It's different for every state, but how is the
16 data -- it's important to have data that's
17 comparable so we're able to recognize inequities
18 and gaps. I think that's significant.
19 MS. PODZIBA: Aaron?
20 MR. PAYMENT: So this language doesn't
21 require states to do it. It facilitates states to

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1 do it, and they can do it. And with the high
2 school dropout issue, states have adopted the
3 governor's statistic for what statistic to use for
4 high school graduation. So I think it's
5 acceptable.
6 I don't think anybody should be afraid
7 of the language of setting some national standard
8 of requirement. I think states will see the value
9 of it, and they will cooperate fully together,
10 just like they did with the graduation.
11 MS. PODZIBA: Mary Cathryn?
12 MS. RICKER: Yeah, thank you.
13 I have a question about the potential
14 of either pulling out or leaving in the phrase
15 "used by institutions of higher education in those
16 states".
17 My question is, if it stays, does that
18 mean that the over eight hundred higher education
19 institutions in the country right now that are
20 either test optional or refuse to accept
21 standardized test scores in their entrance

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1 procedures, that that would open up for us to have
2 some sort of performance opportunity as well.
3 MS. PODZIBA: Patrick?
4 MR. ROONEY: I'm not sure I'm
5 following. What do you mean by performance
6 opportunity?
7 MS. RICKER: So if an institution of
8 higher education either has an entrance procedure
9 that either refuses to recognize standardized test
10 scores, or just says, You can submit them or not,
11 we don't use them; but here is our entrance
12 criteria, right? Here's what we use; we are a
13 higher education institution that uses these for
14 the purposes of entrance into our post-secondary
15 education or training program, and that is across
16 states that there is a similar like a common
17 application, that then a local LEA could choose
18 the performance measures used there instead of a
19 standardized test.
20 MR. ROONEY: So this is about an
21 assessment system. So this is an assessment in

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1 place of the state's high school assessment. If
2 higher education is not including an assessment, I
3 think it wouldn't meet the definition of a
4 nationally-recognized high school academic
5 assessment. I'm struggling to understand what the
6 question is.
7 I think the intent is to be, if there
8 is a test that an institution of higher education
9 or multiple institutions would have to be across
10 multiple states, is using for either entrance or
11 placement, then that test would fit this
12 definition to be an option for states to consider.
13 MS. RICKER: So are you defining
14 "assessment" as only a standardized test in this
15 section?
16 MR. ROONEY: I guess I'm struggling
17 with -- what do you mean by a "standardized test"?
18 I don't think we have defined that term.
19 MS. RICKER: There are performance
20 assessments used both in high school and as an
21 application for higher education that are used

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1 that are not, you know, multiple choice, that are
2 not a standardized test.
3 MR. ROONEY: So I guess maybe it's the
4 definition of standardized test that's throwing me
5 off.
6 Right now many states have, as part of
7 their assessment system, components that are not a
8 multiple choice test. There is no requirement
9 that the assessments have any multiple choice
10 questions on it. It's up to states to determine
11 how they want to design their assessments.
12 If they wanted to -- so long as they
13 make sure the test is valid and reliable and fair
14 for all students and they demonstrate that
15 particular view, then I think that would meet the
16 requirements that's laid out in the regulations
17 we're proposing and the peer review criteria.
18 So I think the definition of
19 standardized test that's hanging me up. It's more
20 about the assessment system in the state and how
21 that's defined by the state.

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1 MS. RICKER: I think that's helpful.
2 Thanks.
3 MS. PODZIBA: Thomas.
4 MR. AHART: I would like to suggest
5 that we refer to what Derrick proposed and just
6 strike reference to any "post-secondary program
7 using using the assessment as part of their
8 entrance requirements or placement requirements".
9 MS. PODZIBA: I think that was a
10 proposal and the Department said that it needed
11 to -- it would oppose striking that, if I
12 understood them correctly.
13 MR. AHART: Could you just explain that
14 rationale a little bit more for me? I'm slowing
15 you up, but...
16 MR. ROONEY: I think our rationale with
17 this definition around nationally-recognized high
18 school assessment is it's more than just an
19 assessment given in multiple states, but it's an
20 assessment that has some additional value or
21 benefit to the student for why it could then be

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1 used in place of the state's high school
2 assessment. Just as a test given in multiple
3 states doesn't meet that bar, and so for that
4 reason we proposed adding "entrance or placement
5 in the post-secondary or training programs".
6 MR. AHART: What if you could
7 demonstrate that your alternative assessment was
8 more rigorous, more cognitively complex and more
9 meaningful to our students than the current state
10 assessment?
11 It seems like there's an assumption
12 that there's a good state test in place now, which
13 is clearly not the case in some areas, and you
14 know we have some tests in mind that we'd like to
15 pursue that won't meet this definition but that
16 would serve our students in the school systems
17 much better.
18 MR. ROONEY: So that may be a good pin
19 to hold and I'd like to come back to that
20 question, because I think Lara had a similar
21 question.

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1 When we go through the criteria that
2 are laid out actually in the ESSA and that are
3 then repeated in the regulations, the requirement
4 is that whatever nationally-recognized assessment
5 that the state approves for districts to use has
6 to meet particular criteria, including providing
7 comparable data and being equivalent in content
8 coverage, and it has to actually provide the same
9 information. So I think that would be -- your
10 definition there would run directly at odds with
11 the definition in the statute of how the state
12 demonstrates that the locally-selected
13 nationally-recognized test is permissible for them
14 to use.
15 It should not be more cognitively
16 complex. It should have the same content
17 coverage. It should have the same difficulty. It
18 should have the same cognitive complexity. It
19 should have the same comparable level of student
20 achievement.
21 That's what the statute says, so I

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1 think that is a challenge with what's in the
2 statute that we're trying to regulate on.
3 MR. AHART: It's possible that it's
4 really not an issue. Are you implying that they
5 have to be identical?
6 MR. ROONEY: I don't know if they have
7 to be identical. They have to be equivalent,
8 which is the word in the statute, in terms of
9 content coverage, difficulty and comparable data,
10 aligned to the standards.
11 MS. PODZIBA: So I know that you
12 weren't intending to do all the discussion of
13 definitions, so what's the most use -- should we
14 go through the rest of the issue paper, or should
15 we work the definition before we do that?
16 MR. ROONEY: I think we should move on.
17 I would say, I think I'd agree with Kerri's
18 suggestion that "provides comparable data across
19 states" will be a challenge to include in this
20 definition to the point I just made that the
21 assessment needs to be providing comparable data

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1 to the state test in that state, and that would
2 then kind of be needless to whatever nationalized
3 test would provide comparable data as opposed to
4 being both things.
5 I think that is a little bit of a
6 challenge for this part of the regulations, back
7 to your point, Thomas, but I think as a result --
8 because earlier in the regulation, which I
9 appreciate we haven't gone through yet, we talk
10 about the nationally-recognized test having
11 provided comparable data to the state test that
12 then is confusing to say we provide comparable
13 state a across states.
14 MS. PODZIBA: So, if it's alright with
15 everyone, let's go through the rest of the issue
16 paper, and then we'll come back to the definition.
17 MR. ROONEY: Thank you. Now going back
18 to Page 2 in the beginning of the regulations, I
19 think to clarify in the beginning, we talked about
20 this is a state -- at the state's discretion to
21 permit an LEA to do this. So you have the reg

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1 text under A, it's clear that the state has the
2 impression that it's our understanding of reading
3 the statute that that's actually what's intended
4 when you read through the requirements that's in
5 the ESSA. So we clarified that here in A.
6 And then following from that, Number 2
7 in the bottom of Page 2, we wanted to clarify, and
8 I think this was a point that Tony made in the
9 last session, that if an LEA is going to select a
10 nationally-recognized high school academic
11 assessment, that it be the same
12 nationally-recognized assessment that it provides
13 to all of its students in its schools, in high
14 school.
15 So in that case, if an LEA selects to
16 do this, it would then replace the existing state
17 test and they give that nationally-recognized test
18 to all of its high school students in the LEA, to
19 Richard's point.
20 So then going back under Page 3, under
21 the State Approval Process, you'll see a lot of

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1 this is laid out in the statute that's in blue
2 text and it was in Issue Paper Number Six when we
3 first talked about it two weeks ago. But the
4 state has criteria it has to establish in order to
5 make sure the test is a valid and reliable test to
6 make sense to include as an option for districts.
7 So these are taken from the statute
8 that the state needs to ensure it's aligned to the
9 state's content standards and achievement
10 standards.
11 "Challenging state academic standards"
12 again refers to both the content and the
13 achievement standards.
14 "Addresses the breath and depth of
15 those standards, is equivalent to a more rigorous
16 statewide assessment," it's -- sorry.
17 Assessments -- "is equivalent in terms
18 of the coverage of the assessments, the
19 difficulty." We added in "cognitive complexity,"
20 which our intent there is to distinguish the
21 difficulty of the assessment and the complexity of

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1 the assessment, which are two different aspects of
2 how the content is being assessed on the test.
3 You could have very hard items that are
4 just simple multiple choice items, and you could
5 have very easy questions, very easy to answer
6 questions that are arranged in more complex form
7 in terms of the kinds of skill that they are
8 asking for in the question. So performance tasks,
9 for example, are more cognitively complex items,
10 generally that can vary in difficulties. We
11 wanted to have both the difficulty and the
12 complexity of the assessment called out
13 specifically under this criteria.
14 And then the quality the assessments,
15 we added in the other aspects, and if there's
16 something we forgot we want to give the district
17 or state the discretion to add other parts they
18 thought were appropriate.
19 And then in addition to the state
20 review, the state has to ensure that the
21 assessment meets all the requirements under our

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1 regulation. So that's what the reference to 200.2
2 is. And in fact it does have the exception for
3 these high school students who are not taking the
4 same assessment as everyone else in the state. So
5 that's the exception that is called out here.
6 And then, under v, that they provide
7 reliable data, to make sure that they're
8 comparable to student achievement consistent with
9 the state's achievement standards, provide
10 unbiased -- (inaudible) differentiation in
11 schools. Again all of that comes from the statute
12 in the blue text.
13 And then under Number 2, this is where
14 we clarify that, you know, all this is another
15 component that has to happen before the state can
16 approve the assessment test. So the state uses
17 its criteria to evaluate the test, and then they
18 submit it to the Department for review, for our
19 review as part of our peer review of what's in
20 romanette ii.
21 We added in romanette i which is the

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1 same language you have seen previously, that
2 making sure that the assessment does not provide a
3 benefit to one group of students that it doesn't
4 provide to another group of students because of an
5 accommodation that may result in, for instance, a
6 non-college reportable score for that student that
7 would be a concern with 806 of the Scoring Act and
8 IDEA and Section 504 of the Rehabilitation Act,
9 that we wanted to have that consistent language at
10 least elsewhere in 200.6 when we talked about
11 assessments for students with disabilities,
12 English learners.
13 And then if you go to C, on Page 4,
14 this is where we clarified a little bit around the
15 applications that a district has to provide when
16 it asks the state to administer the
17 locally-selected math and nationally-recognized
18 high school assessment, based on the state's test,
19 that before it does that, it tries to add some
20 protections for transparency and for parents of
21 the district, that it has to update its district

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1 plan for its education system, and then it also
2 needs to notify parents that they need to attend
3 initiatives before they submit their request to
4 the state, to tell their parents that they intend
5 to request this, and provide parents and the
6 public an option to weigh in on that request and
7 then provide them information about what the
8 impact that may be on the instructional programs
9 in the school districts, and then annually, if
10 they continue doing that, they have to alert all
11 parents in their districts that are affected that
12 they're doing this in place of the state's high
13 school assessment.
14 And I will highlight here in number
15 five, on Page 4, and I think Rita tried to express
16 yesterday, but I promised that I'd come back to
17 it. So this is language that is new language
18 we're proposing around notices to parents under
19 this paragraph that they be in an understandable
20 and uniform format, they be written a language
21 that parents and guardians can understand, and if

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1 that's not practicable that they have them orally
2 translated to parents or guardians. And then upon
3 a request by parent or guardian, write an
4 alternative format, such as in Braille or
5 large-print or type format.
6 I think our proposal would be that in
7 other places of this regulation, if we can agree
8 to the language here on number v, that we would
9 then use that consistent language in other places
10 where we talk about notice to parents, that they
11 would parrot that language and make sure they copy
12 that into other sections in the language. So we
13 could spend some time on that.
14 Sorry, I think we realize it may be
15 better to put it in one place and then put it
16 throughout instead of repeating, but we can talk
17 about it here, the proposal of the language, and
18 then we can take that back and figure out how best
19 to incorporate it.
20 MS. PODZIBA: Ok, we've got a line
21 already.

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1 Richard.

2 MR. POHLMAN: So, I want to offer some

3 technical -- mostly technical limits regarding how

4 this plays with charter schools.

5 And we tried to do some work to

6 incorporate the variety of elements of charter

7 law, local charter law, and I really stress that I

8 feel this is important for regulations and not

9 Guidance because of references within ESSA that

10 are different to local charter laws. So we think

11 it's important to have that included here too.

12 So I have a series of proposals that I

13 guess I'd like to put up there. The first is,

14 under 200.3A, that it read -- I'm just going to

15 read out what it should say. "A state, at the

16 state's discretion, may permit an LEA, and," this

17 is the part, "and a public charter school

18 notwithstanding the status of an LEA to administer

19 the nationally-recognized assessment".

20 And then in two, or I'm going to get to

21 revise. After, or sort of midway -- after the

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1 clause C there, adding a comma, it says "except
2 that students attending public charter schools
3 shall be assessed according to the terms of the
4 Charter School Performance Agreement and state
5 Charter School Law.
6 MS. PODZIBA: Say that again.
7 MR. POHLMAN: "Students attending public
8 charter schools shall be assessed according to the
9 terms of the Charter School Performance Agreement
10 and state Charter School Law".
11 And I think the intent behind this is
12 that charter schools in most jurisdictions have a
13 dual level of accountability, one that is to the
14 state's accountability system, but another that
15 exists through their charter agreement with their
16 authorizer. And then it's important that an
17 LEA -- a free-standing charter LEA may not be able
18 to sort of petition to the state to use something
19 that's out of compliance with their charter
20 agreement with the authorizer.
21 Does that make sense, Kay? So I didn't

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1 do a good job of explaining it?

2 And then iii under that section --

3 MS. PODZIBA: Do you want to -- let's

4 just hear from Kay before we get --

5 MR. POHLMAN: Sure.

6 MS. RIGLING: I was just wondering how

7 this would work. I mean, wouldn't the default

8 just be the state assessment then?

9 MR. POHLMAN: Yes, it would be. Then

10 the point is that the LEA would not necessarily

11 be -- the LEA must administer the same locally

12 selected assessment, so this would be an exception

13 to -- sorry, let me --

14 MS. PODZIBA: So a charter school in an

15 LEA would not then have to --

16 MR. POHLMAN: Yes. If that LEA

17 determined -- and had a charter school and that

18 LEA determined it's going to measure some impacts

19 not in compliance with the authorizer's agreement,

20 that that charter school would not actually

21 implement that alternate assessment. It would

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1 implement what's in its charter agreement.
2 MS. RIGLING: I guess where I'm
3 struggling with that statement is that, presumably
4 in the absence of this provision, the charter
5 school would be taking the state assessment.
6 So wouldn't its state charter agreement
7 always be consistent with the state assessment?
8 It may not allow for another assessment, but it
9 would at least allow for the state assessment,
10 right?
11 MR. POHLMAN: What you're saying is
12 correct, yes.
13 MS. PODZIBA: In which case, is this
14 necessary or not necessary?
15 MR. POHLMAN: It is not -- I think this
16 is. I think what this is saying, Kay, is that the
17 LEA must administer the same locally-selected
18 nationally-recognized assessment to all high
19 school students in that LEA.
20 If the LEA has a charter school in it,
21 within LEA there is a charter school, which is a

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1 district charter, and they have multiple -- then
2 you would -- then that locally-selected
3 nationally-recognized high school assessment is
4 not consistent with the authorizer's agreement,
5 then that charter school would not then take that
6 nationally locally-selected -- you got what I'm
7 saying? Sorry.
8 MR. PAYMENT: I think I have a
9 clarification.
10 MR. POHLMAN: Do you want me to read the
11 third one and then --
12 MS. PODZIBA: Is that the sum total?
13 MR. POHLMAN: Yeah, under A. So I'm
14 happy to wait and I'm --
15 MS. PODZIBA: Go ahead. I didn't know
16 if you had --
17 MR. POHLMAN: It's a long sheet of
18 paper.
19 Three, "Before an LEA requests approval
20 from the state to use a locally-selected
21 nationally-recognized high school assessment, the

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1 LEA must provide an opportunity for meaningful
2 input to all public charter schools whose students
3 would be included in such assessments".
4 MS. BECKER: Is this totally new?
5 MR. POHLMAN: Yes, it is totally new.
6 MS. PODZIBA: I have a hunch there are
7 a lot of different issues. I don't know if I want
8 to spend a whole lot of time on this issue.
9 Generally no one has a problem with it.
10 (Show of hands.)
11 MS. RICKER: I have a couple questions.
12 MS. PODZIBA: Shucks. Wow, we can't
13 get traction anywhere.
14 Alright, Aaron.
15 MR. PAYMENT: I think what we are
16 requesting, because, so we have a -- we have a
17 state charter public school academy. We're also a
18 VIP. Our regulations come down from our charter
19 institution, university, and often what happens
20 is -- and this is what I think is going to play
21 out in a second -- is the disputes over whether or

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1 not charter schools or public schools and whether
2 or not they follow state regulations, and I can
3 see the concern about defaulting to the LEA when
4 the charter is really independent of that.
5 It fully falls under the state, but it
6 doesn't necessarily fall under the local LEA. So
7 I think it makes sense.
8 And further we also fall under the
9 tribal jurisdiction. So we have all of these that
10 we have to comply with. So I can see, often the
11 local LEA, the local district is at odds with
12 charters, because we're taking kids away from
13 their schools. So, I would support having a
14 separate carveout for charters. It's got to be
15 consistent with the state anyway, but it shouldn't
16 be beholding to the local LEA.
17 MS. PODZIBA: Tony?
18 MR. EVERS: This would conflict with
19 Wisconsin state law and I'm guessing some other
20 state laws.
21 MS. JACKSON: Could you explain that,

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1 Tony.

2 MR. EVERS: In Wisconsin, all public

3 schools, public charter schools that are part of

4 public school districts, independent charter

5 schools and voucher schools are required to take

6 the same state test. So this would conflict with

7 Wisconsin law.

8 MS. GEORGE: And federal law.

9 MR. PAYMENT: I think I said that.

10 MR. EVERS: Yes, you did.

11 So that's a larger issue. I'm not sure

12 how we want to make sure he we report our

13 accountability systems and have them keep

14 comparable data, and this is going to take us down

15 the road where it isn't comparable.

16 But that's a bigger issue. I'm just

17 telling you it's against Wisconsin state law.

18 MR. POHLMAN: Can I just offer, Tony, do

19 you think that would be covered by the fact that

20 the general provisions of the state, the state's

21 discretion would permit this?

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1 The state, if it conflicts with state
2 law, would of course not permit it?
3 MR. EVERS: Yes. Yes.
4 MS. PODZIBA: On this point? Lara, on
5 this point?
6 MS. EVANGELISTA: Yes, it's on number
7 ii.
8 MS. PODZIBA: Ok, I'm trying to see,
9 does Richard's proposal work or does does it not
10 work?
11 Ok, so I'm getting a lot of nos.
12 We have so much to do and I'm feeling
13 the time stress.
14 MS. GEORGE: So are we.
15 MS. PODZIBA: Good, I want us all to
16 feel it.
17 If it doesn't work, we don't have to
18 get all the comments about why it doesn't work.
19 Let's just move to the next issue, because I know
20 that there are a lot of issues that people want to
21 raise on this.

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1 Is there a lot of concern? In other
2 words, will this not fly with the committee.
3 MS. GEORGE: I just have a clarifying
4 question.
5 MS. PODZIBA: Ok.
6 MS. GEORGE: My question is to Patrick
7 and Kay. Is there another provision in that -- I
8 can't remember off the top of my head -- related
9 to charters and compliance with the provisions of
10 ESSA? I thought there was a charter
11 accountability provision?
12 MS. RIGLING: It's basically a
13 provision that says that oversight for
14 accountability will be governed by the state
15 charter school law.
16 But charters are treated as public
17 charter schools under ESSA and subject to the
18 requirements of ESSA.
19 MS. GEORGE: Thank you.
20 MS. PODZIBA: So it sounds like enough
21 of the people who understand this issue and

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1 proposal say that this won't work. So I'm going
2 to move us on to the next issue. Sorry, Richard.
3 Lara, you're up next.
4 MS. EVANGELISTA: Well, it's also on
5 number ii, and maybe I don't know if my proposal
6 will fly, but it might work.
7 So in New York City, we're considered
8 one district, and we have seventeen hundred
9 schools I believe, and so, this is -- you know,
10 and I think I mentioned this in our last
11 discussion which was very concerning, and we're
12 also a school choice. So kids travel from all
13 over New York City. I get kids from all over
14 Queens, but also from Brooklyn, the Bronx. And,
15 you know, the school that's a half a mile down the
16 road is a selected high school, and I guess I'm
17 just concerned if we're saying that everybody in
18 the district, and a district as large as ours with
19 very diverse schools, having them have to take the
20 same exact assessment, I would be concerned if
21 they took something like the SAT, which would be

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1 fine for the school down the road, but not
2 appropriate for my students.
3 So I would propose to strike the whole
4 thing.
5 MS. PODZIBA: Patrick?
6 MR. ROONEY: Sorry, strike -- so you're
7 proposing to strike all of number ii and let the
8 LEA be the same test district wide.
9 MS. EVANGELISTA: Or in something as
10 large as a district like ours, I don't see how
11 they could ever choose something that would be
12 appropriate for all of our schools and our
13 students.
14 MR. ROONEY: So I will say right now
15 that's what happens, across all schools in the
16 state, that all schools in the state give the same
17 test.
18 So this is actually -- I appreciate New
19 York is larger than all other districts, but it
20 would then be permitting a district to make a
21 selection at the more micro level, micro

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1 determined for New York City, then at the state
2 level and giving a limited discretion.
3 I think then our rationale for why it
4 would be included would be that, providing a level
5 of comparability across schools and the district
6 is important, and if you start to let schools
7 within the district each select their own
8 nationally-recognized assessment, you then have a
9 harder time saying, What does this mean about how
10 this school is doing versus this school down the
11 street? We just take a different test.
12 That would be a concern providing
13 information to the parents and the public that is
14 easily understandable and has a multitude of
15 assessments that is potentially being administered
16 within the district.
17 MS. PODZIBA: Lara, does that respond
18 to your concern or do you sustain that concern?
19 MS. EVANGELISTA: I don't know. I'm
20 just thinking about situations where maybe perhaps
21 certain schools would want to use something like

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1 the IP or the AP for their schools, but other
2 schools wanting to choose something else.
3 You know, I'm just thinking of all the
4 difference scenarios, and again, being in a
5 situation where, you know, we have schools that
6 are serving very specific populations, and if the
7 district does choose something and it's not
8 appropriate, I don't know, I have just some
9 concerns about that.
10 MS. PODZIBA: But could you imagine New
11 York City choosing something like this?
12 MS. EVANGELISTA: I don't know. I
13 mean, I'm thinking on my school level. So,
14 nothing comes to mind, but I also know that
15 certain schools would probably want to use the AP
16 or the IB exam, rather than take all the state
17 assessments and take the AP and IB exams and the
18 SATs for their students, all the time we're
19 administering all these tests, it's taking away
20 from instruction for the students.
21 MS. PODZIBA: Ok. Derrick.

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1 MR. CHAU: Actually my thoughts were
2 pretty similar to Lara's, except I didn't think to
3 strike the whole piece.
4 My proposal was really around the
5 practicality of implementing something like this
6 on a large district scale. So Miami is just
7 behind New York in terms of size, and so we've had
8 a rather checkered history on proposing things.
9 So I would like to propose having it be
10 a binary idea in section ii where its either/or,
11 or it's everybody, everybody is sort of an extreme
12 step, I would actually propose that the LEA must
13 include a plan and timeline for ensuring that the
14 same locally-selectednationally-recognized
15 academic assessment is administered to all high
16 school student, so that gives an implementation
17 plan around this. Rather than a wholesale, we're
18 going to do it all, or we're not going to do it
19 all.
20 When you think about how these things
21 are implemented in districts, you have to think

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1 about how you're going to implement it, and
2 instead of all things for one, you have to think
3 about each district.
4 Our district, like New York and LA,
5 that's a lot of schools, and to ask us to do that
6 all at once would not be fair and it would limit
7 the implementation of such assessments at a
8 district wide level.
9 MS. PODZIBA: Thoughts about Derrick's
10 proposal?
11 Lara, does that help you?
12 MS. EVANGELISTA: Yes, that would work
13 for me.
14 MS. PODZIBA: Rita, do you have a
15 response to that?
16 MS. AHRENS: I have a question on this,
17 Derrick, because when a state changes its
18 assessments or updates it or switches -- you know,
19 everybody takes tests at the same time, or they
20 wait until all the schools are ready, and so I
21 think as a parent I'd be concerned if I see that

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1 school down the road taking the AP test and my
2 school is not in it, and we're on a further
3 timeline, I think I would just be quite upset that
4 my child is not taking the same test as some other
5 school in the district.
6 I see this has a possible equity issue
7 and that it might be causing more harm to allow
8 schools to decide which ones get upgraded first to
9 the new assessments.
10 MS. PODZIBA: Patrick, do you have a
11 thought about this? I mean, what we're hearing is
12 from very large districts that there's some
13 concern about this.
14 MR. ROONEY: So I have two comments for
15 this, and I do think I need to talk to others in
16 the committee, the rest of the committee to see if
17 it feels comfortable going forward with this
18 language.
19 One, right now, when states develop new
20 assessments, they roll them out across the whole
21 state all at once. So I appreciate again LA and

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1 New York being very large districts that have more
2 schools than some states, right now, when
3 California has a new assessment, it rolls it out
4 across all schools across the whole state all at
5 once.
6 So this doesn't seem -- by pilot there
7 wouldn't be a -- you could pilot it before you
8 came in and actually asked for it for your state
9 as part of this. But when they actually
10 administer the test the first time, they do it for
11 all schools.
12 So I don't know that it's an entirely
13 unreasonable expectation that if the state were to
14 do this or the district were to do this, that they
15 would do it all at once. That is the current
16 practice in states that are having assessments.
17 And the second is I think we do share
18 Rita's concern that if pockets of schools within
19 the district select IB, and others select
20 something else, that's a challenge as to what's
21 being offered to some kids and not others based on

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1 what school they attend.

2 MS. PODZIBA: I'm noticing that there's

3 other people who would oppose that proposal. So I

4 think we're going to move to the next one.

5 Audrey?

6 MS. JACKSON: No --

7 MS. PODZIBA: Lisa.

8 MS. MACK: Mine is about number five.

9 MS. PODZIBA: Number five on where?

10 On Page 5.

11 MS. RICKER: Are we done with ii then?

12 We're not back from Lara's?

13 MR. POHLMAN: I'm sorry, could I raise

14 a point of procedure?

15 I totally understand what you said

16 around feeling time pressured, but I feel like

17 that since coming back from lunch now there's been

18 two proposals that have been put out on the table,

19 mine included in which I don't hear large

20 objections being noted on the record, but you as

21 the facilitator pushing us through.

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1 So I am sensitive to the time
2 pressures, but I'm also sensitive to the fact that
3 this is a recorded meeting. Our constituencies
4 are held to some responsibility for not commenting
5 after this. I as a charter rep don't have a voice
6 to not consent to something.
7 So I feel like, if that's going to
8 change, we need to just come to some consensus
9 about the way you're going to move forward,
10 because my proposal as well as Lara's I feel were
11 really not considered.
12 MS. PODZIBA: So your proposals were
13 put out and there were a number of people who said
14 they couldn't live with it.
15 So the question for me as the
16 facilitator is, if I see a lot of people saying
17 No, I won't support that by shaking their heads,
18 that gives me an efficient way of saying this
19 proposal is not going to fly without taking the
20 time for every person to articulate their reason
21 for why they won't live with it.

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1 MR. POHLMAN: The way the table is
2 structured, I cannot see everyone's head. The
3 only thing I heard on the record was Tony's
4 objection, to which I responded, isn't there a
5 safeguard, and he consented yes.
6 So again, additionally I proposed three
7 different things that were not thought
8 individually addressed, so I'm going to put that
9 out there.
10 MR. PAYMENT: I want to point out, I
11 support how you are managing the process, because
12 if we are not going to get to an agreement,
13 because we do this at the tribal council level and
14 we'll haggle and haggle and haggle, and then we
15 don't get anything done.
16 However I do think on that particular
17 issue, I think we were probably really close to
18 finding agreement, and unless -- I didn't see the
19 numbers on dissent.
20 So on that one agreement, which, the
21 way that we rephrased language and Tony was in

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1 agreement with it, I think that maybe that one was
2 a missed opportunity.
3 But I think principally the way you are
4 doing it is if it looks like you're just going to
5 end up arguing over things, sometimes its better
6 to part things and get to the things that we can
7 get done, otherwise it spoils the ability to get
8 things done.
9 MS. PODZIBA: So if we agree to a third
10 meeting, we still run the risk of not even having
11 the chance to reach consensus just because time
12 runs out.
13 So, part of what I would ask everyone,
14 and Richard I know this is a priority for you, I
15 can do two things: I can, for every proposal, ask
16 if there would be dissent. And we could do that
17 in a formal way so that everyone could see that
18 there was either consent or dissent to their
19 proposal. It's not my preference.
20 I'd like to understand where you felt
21 the missed opportunity was, because I thought

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1 there was a lot of discussion that said that the
2 charter school proposals weren't acceptable.
3 Maybe I missed something on that.
4 But, I think what I need to do is ask
5 people to try and identify priorities, and if
6 someone says something, not have to repeat it.
7 So, I'm just going to need help from
8 everybody to move more quickly through this.
9 And I'm also feeling concerned about
10 what's a proposal, what isn't a proposal. When a
11 proposal is very discreet, it's easier to manage,
12 although part of what's a question for me is, what
13 are the priorities of the group? Because if we
14 spend a half an hour or forty-five minutes on
15 every proposal, I don't have a way of knowing that
16 we're getting to the most important proposals on
17 behalf of the group.
18 So that's what I'm at a little bit of a
19 loss for. It's a very large table. There's a lot
20 of material to cover.
21 So I could use your assistance in

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1 figuring out how to manage the discussion in a way
2 that gets -- and I think your point -- that gets a
3 fair opportunity, so that every proposal gets a
4 fair opportunity, but within the constraints of
5 the time that we have.
6 MR. POHLMAN: I think my biggest
7 objection -- first of all, this is the only
8 proposal that I had to bring to the table all day
9 on five issues. So I will hold back on the
10 comments.
11 However I think it is important for
12 dissent to be called for and noted on the record
13 in order for us to have the opportunity to go back
14 to that record should that be necessary, and it's
15 been necessary in other processes.
16 So I would just push at least for that
17 one.
18 MS. PODZIBA: Ok. Alvin?
19 MR. WILBANKS: I just let go perhaps as
20 we are making comments, try not to make them so
21 lengthy and talk about things that we all really

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1 know. I've been reminded fifteen times about what
2 this does or what that does, and some of the
3 things some of us know. So I think brevity might
4 be one way of moving things along and then we
5 could talk about some substantive things.
6 And I don't mean that in line of
7 cutting people off. We just didn't have time.
8 MS. PODZIBA: So I want to, on
9 Richard's behalf go back to the charter proposals,
10 and Patrick and Kay, perhaps I misunderstood. I
11 thought you were saying that the Department --
12 that those didn't work legally.
13 Did I misunderstand that?
14 MS. RIGLING: I was just
15 questioning -- I don't dispute the fact that
16 charter schools within an LEA are in a unique
17 position, because they're under the LEA, and yet
18 they certainly have autonomy that other schools in
19 the LEA don't have, and that autonomy is granted
20 to them in their charter.
21 What I was just questioning is, the

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1 phrase, "if inconsistent with the charter,"
2 because to me the charter would always have to
3 enable them to take the state assessment.
4 So it seemed like, rather than an
5 assessment that was acceptable to the charter,
6 maybe the answer would be the state assessment.
7 MS. PODZIBA: Patrick?
8 MR. ROONEY: I was going to say --
9 Richard is nodding his head. I think the proposal
10 then would be to change your language to that
11 assessment, is that "state assessment instead of
12 the assessment as determined by the authorizer".
13 MR. POHLMAN: And you would make that
14 modification in the A ii? Is that the one you're
15 talking about?
16 MR. ROONEY: I think so.
17 MR. POHLMAN: Yeah, I think that would
18 make sense.
19 MS. RIGLING: I mean, your charter
20 LEAs are going to have this same opportunity as
21 any other LEA, and it will probably be a lot

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1 easier for them.

2 MR. POHLMAN: Yeah, it's a weird

3 district within district to oftentimes have split

4 control, and they're very much at odds.

5 MS. PODZIBA: Were there people who had

6 concerns about this proposal?

7 Rita?

8 MS. AHRENS: I think my concern with

9 this is the comparability within the district. So

10 I'm thinking of places like New Orleans, which is

11 a hundred percent charter. So you could have some

12 of the charter schools using I guess the state

13 assessment and some using some other assessments.

14 I mean, it seems to me that it's already a mess in

15 terms of looking at data on other points.

16 I really would like -- I don't think

17 it's within the Congressional intent to allow

18 charter schools to be exempt from this, otherwise

19 I would wonder why Congress didn't put it into

20 statute.

21 MR. POHLMAN: So your example can happen

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1 already, because the charters in New Orleans are
2 LEAs. So that happened. As long as Louisiana
3 decides to list those as state group assessments,
4 that situation can happen.
5 MS. PODZIBA: Aaron.
6 MR. PAYMENT: Alright, the reason I
7 support this, the way I understand -- my tribe has
8 a charter school. We are the LEA. So we don't
9 have an LEA telling us what we can or can't do.
10 This is the default to the state. So the local
11 LEA can propose something, but you go to the
12 state.
13 So I think, maybe I have a lack of
14 understanding of what charter schools are.
15 Charter schools are public schools. They're
16 required to follow the law under the state as
17 funneled through the chartering entity. They
18 can't write regulations in the charter that
19 conflict with the state law.
20 So my concern is that, in those
21 circumstances where the LEA might conflict with

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1 the state, which they shouldn't be able to, but if
2 that's the case then it defaults to the state
3 proposal. I'm supporting that the state controls.
4 MS. PODZIBA: Alright, were there any
5 other concerns with this proposal?
6 Liz?
7 MS. KING: Yeah, so I mean an LEA, I
8 disagree with the proposal. The state and the LEA
9 are both meaningful units under Title I, and so if
10 a charter's in an LEA, then it is a school in an
11 LEA. If it is it's own LEA, then it's it's own
12 LEA.
13 The language says "a state may permit
14 an LEA," so whether that -- however the state
15 configures it with a charter being part of an LEA
16 or its own LEA, then it needs to continue being
17 about the LEA. Because creating individual
18 exceptions for individual schools I think is not a
19 good idea. I think it's bad policy and I think
20 it's contrary to the very, very narrow exception
21 that the statewide assessment included here.

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1 I also have a new proposal, so I can
2 either say that now or I can wait.
3 MS. PODZIBA: Is it relative to the
4 charter school issue?
5 MS. KING: No.
6 MS. PODZIBA: Ok, so let's wait on
7 that.
8 Anything else about the charter school
9 proposals?
10 Ron.
11 MR. HAGER: My understanding is that
12 the ESSA trumps -- charter school provisions have
13 to be consistent with the ESSA, so that you can't
14 have a charter school that is free to have a
15 different assessment. That's why I'm disagreeing
16 with this proposal. If it's conflicting to me,
17 it's conflicting with the ESSA provisions.
18 A charter school that is not its own
19 LEA, but a charter school that's a member of an
20 LEA, that the ESSA provisions that would apply to
21 that LEA would apply to the charter school, which

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1 is the statewide system of assessments, and this
2 is a limited exception to that provision, but
3 charter school is still a member of that LEA.
4 So that's why I'm not supporting this
5 suggestion.
6 MS. PODZIBA: Kerri, do you have a
7 comment on this?
8 MS. BRIGGS: I was going to say I think
9 we should offer some deference to charters that
10 are in the LEA to allow the integration to happen.
11 MS. PODZIBA: Aaron.
12 MR. PAYMENT: I still think that
13 somehow we're communicating in different
14 languages, because there is this presumption that
15 charter schools are not required to follow the
16 state regulations. They are. They're not
17 chartered outside of the state. They're chartered
18 to the state. So they're required to follow the
19 state regulations.
20 And so this sphere of concern that it
21 conflicts, it can't possibly conflict, because

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1 they are chartered under the state law. And the
2 institutions, and usually universities, will not
3 receive their charter funding if they write a
4 regulation that conflicts with the state.
5 So this is an unfounded concern because
6 it's not based in any reality.
7 So, one final thing is, tribes have
8 components. The state is often the component, but
9 I will tell you that for equity purposes local is
10 presumed -- where we we experienced the
11 discrimination disadvantage is generally at the
12 local level at the LEA level.
13 I gave you kind of the sanitized
14 version of what I did to try to improve the local
15 school system, but it was hard to get them to
16 where we needed to get them.
17 But the state is less of the enemy than
18 the local LEA in the circumstances for an American
19 Indian population, I happen to be an advocate for
20 other Indian populations.
21 So nothing is being advocated here that

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1 is to allow the charter schools to have
2 assessments that are inconsistent with the state
3 regulations, and if you understand that and agree
4 with that, then you shouldn't disagree with the
5 proposal.
6 MR. POHLMAN: Can I offer just a
7 different proposal and that we struck the language
8 except for the consultation language I included in
9 iii, would people be amenable to that? Because I
10 think it could address not all of my concerns but
11 the majority of my concerns if we could come to
12 consensus around the inclusion of iii alone.
13 MS. PODZIBA: Ok. Would there be any
14 dissent to adopting this change?
15 MS. RICKER: Can I ask a question?
16 MS. PODZIBA: Yes. Mary Cathryn.
17 MS. RICKER: My question is, on the end
18 when you talk about "whose students would be
19 included in such assessments," and doesn't -- and
20 maybe I have two questions.
21 Are you explicitly referencing a

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1 district that is acting as an authorizer, and so
2 therefore their decision affects those students?
3 Because my lingering question is an
4 independent -- so an LEA charter, right? So let's
5 do St. Paul is an example. There is a charter
6 school there. They're small enough that they
7 contract with St. Paul public schools for their
8 English language services and their exceptional
9 need services.
10 So suddenly I see a concern in that,
11 would those students then, because they're having
12 those services contracted and therefore those
13 teachers are trained to offer the assessment that
14 the district chose, theoretically if the district
15 could choose it, the charter school though chooses
16 something else, because they can, as their own
17 LEA, is that a situation that could occur?
18 MR. POHLMAN: Can I just say --
19 MS. RICKER: Yes.
20 MR. POHLMAN: That situation can occur
21 without any of my amendments. In iii, all you're

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1 saying is that before an LEA, and you're right to
2 say it's the LEA that has charter schools that
3 they have -- not a charter LEA, but a district
4 that is an LEA and authorizes charters before they
5 make this decision to move to a different
6 assessment in my school, that the LEA must provide
7 opportunity for meaningful input, or meaningful
8 consultation, if you will, to all public charter
9 schools whose students would be included in such
10 assessments.
11 So it's just that time in which that
12 charter schools -- and in most, and I'm sure all
13 of the districts here at the table do a great job
14 with communicating with charter schools in the
15 districts, but that does not happen everywhere in
16 the country, and I'm simply trying to advocate for
17 those schools who might be in a situation of
18 really not even being communicated with prior to
19 this assessment switching, other than an approved
20 statewide concern.
21 MS. PODZIBA: Any concerns about this

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1 proposal?

2 MR. HAGER: Personally it doesn't

3 matter whether you use "consultation" or or

4 "input". I would defer to you.

5 MS. PODZIBA: Marcus.

6 MR. CHEEKS: I think for consistency

7 purposes, maybe we should use the term "meaningful

8 consultation".

9 MS. PODZIBA: Ok. Thanks for bringing

10 us back and avoiding that missed opportunity.

11 MS. RICKER: Can we be explicit "as an

12 authorizer"?

13 MS. PODZIBA: No.

14 Ok, let's go back to Lara's proposal

15 which was to delete paragraph ii.

16 I'm going to just ask quickly, is there

17 dissent from deleting paragraph ii?

18 Yes? Ok, Derrick we already went

19 through your proposal, so I think we're ready

20 for --

21 MR. CHAU: There's been a consistent

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1 response from others on the committee that somehow
2 having the same assessment for all students is
3 what we want. That is not the case right now, and
4 we have a whole assessment item here where eighth
5 graders are not taking the same assessments.
6 And so there is an inconsistency here
7 that I just want to point out. I know we're not
8 going to get agreement on getting rid of this, and
9 I appreciate the feedback that we have the
10 latitude to pilot something like this and
11 implement it the way we want to, but I just want
12 to point out that we are allowing different
13 assessments right now in our district and among
14 individual students, and by not allowing different
15 assessments for large districts especially we may
16 be limiting the district from trying anything,
17 which is actually a disadvantage to some students
18 at well, who are special needs students and/or
19 gifted students.
20 I just want to put that out there. I
21 totally recognize that I'm not going to get

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1 traction on this, but I just wanted to comment on
2 that.
3 MS. PODZIBA: Thanks.
4 Lara, did you want to last comment on
5 this?
6 MS. EVANGELISTA: Yes, and also to
7 Derrick's point as well, the assumption that
8 because the assessment is different, you're not
9 measuring the standards in the same way, and there
10 are processes in place that review these
11 assessments and peer review to make sure that they
12 are measuring the standards.
13 So just because it's not the same exact
14 assessment doesn't mean that we're lowering our
15 standards or that we're not assessing the same
16 standards.
17 MS. PODZIBA: Thanks.
18 New issue, Lisa.
19 MS. MACK: Ok, again I don't know if
20 we're going sequentially, so I'm at the bottom of
21 Page 4.

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1 MS. PODZIBA: Take us where you want to
2 go.
3 MS. MACK: Just a quick question, just
4 a quick comment, as a parent, I'll very happy with
5 number v.
6 MS. PODZIBA: Thank you. I appreciate
7 the infusion of some positive thoughts.
8 Audrey?
9 MS. JACKSON: I wanted to propose, for
10 2(i) on Page 3, that this address that the LEA
11 would ensure that accommodations are advocated
12 for, secured and provided, that the families
13 themselves would not have to go through the
14 process to do that; so basically the LEA
15 coordinating with the testing provider as opposed
16 to the families having to do that.
17 I know it says "afford any benefit from
18 such participation that is not equal to the
19 benefit," perhaps to just note that whether
20 accommodations are used or not is not noted in any
21 way for others to --

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1 MS. PODZIBA: What's the change? Do
2 you have a proposal?
3 MS. JACKSON: Oh, the change? So the
4 proposal would be -- so "ensure that the LEA
5 secure the use of appropriate accommodations".
6 I don't know if others -- you have
7 suggested language, and "that the families not
8 need to do it". I don't know if you need to say
9 what doesn't need to happen. You don't need to
10 say what you don't need to do, but what you do
11 need to do.
12 And then with regard -- others can
13 chime in if you have an opinion on clarifying
14 this, but that would be the first part.
15 The second is that, after the
16 accommodations before the semicolon at the bottom,
17 maybe, "including but not limited to having no" --
18 it's a lot of negatives, but like "no indicator
19 whether accommodations were used or not on the
20 reporting of scores".
21 I think that needs to be cleaned up a

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1 little bit. Basically if the child had
2 accommodations, others are not able to judge their
3 score, with an asterisk, or whatever that they had
4 accommodation.
5 MS. PODZIBA: Ok, discussion on that
6 proposals? Are your cards up up for something
7 else?
8 Liz?
9 MS. KING: Yes. I think it's great to
10 report.
11 MS. PODZIBA: Thank you. Ron?
12 MR. HAGER: That covers a lot of things
13 we had talked about in week one, and just in terms
14 of language, I think that if you look at the way
15 it was written, your first one would be an A maybe
16 that if the district would secure the
17 accommodations, and then when you got the "or"
18 after any benefit that is not equal too, that
19 could be a B and that would be where your language
20 would play into.
21 I'm just trying to organize it. I

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1 think what you are saying is trying to organize
2 it.
3 MS. JACKSON: I'm totally open to more
4 organizing language.
5 MS. PODZIBA: Right. So we could let
6 the Department clean that up in its romanette
7 language.
8 Kerri.
9 MS. BRIGGS: I like Audrey's additions,
10 all of that. I'm just curious about the reporting
11 about not flagging an accommodated test, but in
12 fact it is an accommodated test and states are
13 supposed to report on the number of kids that take
14 accommodated tests, so how does that work?
15 MS. JACKSON: To clarify my intent,
16 correct me if I am wrong, if it's an SAT or ACT or
17 whatever, you're submitting it to colleges, in the
18 child sharing of their score, that the individual
19 school wouldn't pattern up on it, not the
20 reporting to the state.
21 MS. BRIGGS: I thought that's what you

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1 meant. I want to say that we have this thing how
2 best to write it without it conflicting.
3 MR. ROONEY: It may be a question of
4 the report that the state provides to the
5 Department on the number of kids with an
6 accommodation, versus the individual student
7 report, which I think is what Audrey is trying to
8 get at, and it may be a reference to 200.8, which
9 is where we talk about reporting. That may help
10 to clarify that.
11 MS. PODZIBA: Ryan, do you have a
12 comment on this?
13 MR. RUELAS: Not on this, no.
14 MS. PODZIBA: Any other comments on
15 Audrey's proposal?
16 MS. KING: I think a short other piece
17 of this is that the individual student -- telling
18 a parent that their child receives accommodations
19 isn't the problem, right. If we are specifically
20 talking about SATs and ACTs and these entrance
21 exams that the institution of higher ed receiving

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1 the score report, and I don't know that that's
2 governed anywhere.
3 MS. JACKSON: Alright.
4 MS. KING: So I wonder if -- I think
5 there's a way to clean it up, but I think that's
6 the intent, right, that you're going for is that
7 that's the concern.
8 It's not that a parent in their
9 individual child's score report has been told that
10 their child receives accommodation, but that
11 somebody, a school, a college is told that child
12 receives accommodations, which could have a bias
13 and effect on the way that school interprets that
14 score.
15 MS. PODZIBA: Aaron, do you have a
16 comment on this item?
17 MR. PAYMENT: Not this one, no.
18 MS. PODZIBA: Is there any dissent from
19 adopting Audrey's proposal?
20 (No dissent.)
21 MS. PODZIBA: Ok, great.

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1 Ron, new issue.

2 MR. HAGER: It's basically a corollary.

3 These provisions that you've got under B here,

4 where the state requirements for the LEA that's

5 seeking to use one of these assessments.

6 As you said in your preliminary

7 remarks, Patrick, that the SEAs themselves are

8 also using these types of assessments that we

9 would want to have this criteria apply to both,

10 both types of assessments, particularly Audrey's

11 point, but all of them really in terms of the

12 breadth and depth of the subject accountability

13 and state and school district differentiation, all

14 of those requirements.

15 And maybe they read into 200.2, but

16 some of them are different enough that we want to

17 at least lay them on the table that they should

18 apply to any of these types of assessments.

19 MR. ROONEY: So I'll flag that. That

20 is covered in 200.2, and when you look at 200.2

21 you see things that we have flagged for us that we

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1 have to consider, suggestions from you.
2 I think this piece here in B is looking
3 at how the state is evaluating the
4 locally-selected, you know, the LEA application
5 for a nationally-recognized assessment,
6 particularly in relation to whether it's aligned,
7 whether it's equivalent to the state test.
8 So I think these are specific criteria
9 that the state would be applying with respect to
10 evaluating us, our locally-selected
11 nationally-recognized assessment, which it's why
12 it's good to have them here. You know, some of
13 them are repeated for the overall quality of the
14 assessment in part ii.
15 MS. PODZIBA: So that's not a new
16 proposal. That's support.
17 MS. JACKSON: I have a clarifying
18 question.
19 MS. PODZIBA: Sure.
20 MS. JACKSON: Does that include that
21 the test be able to distinguish performance levels

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1 for the lowest performance -- like lowest
2 subcategories? Is that the same guideline?
3 MR. ROONEY: That's not here either.
4 The test needs to make sure it has
5 multiple achievement levels and then it needs to
6 ensure that it's measuring the achievement of
7 students against the standard that the state has
8 selected. That's a general kind of practice.
9 I'm not sure if there's a specific
10 question I missed, Audrey.
11 MS. JACKSON: I think Ron was talking
12 about the other criteria for state-administered
13 tests, that you were confirming that this would
14 also have to follow that criteria. And I was just
15 checking if what Ron is referencing, I believe,
16 includes that the lowest performing kids -- that
17 there is sub-differentiation in their performance,
18 which is something that not all SAT ACT type
19 things do. I'm asking if you would have that
20 comparable.
21 MR. HAGER: Yeah, there are some unique

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1 features to these nationally-selected assessments
2 that apply to local school districts selecting it
3 and would also supply at the state level.
4 So I think if we look at 200.2 to make
5 sure that these are covered, I think that's --
6 yeah. I get your point that not all of these
7 would be applicable to the state selecting it, but
8 I think some of them should be.
9 MR. ROONEY: Right, so I think these
10 are about, if you are comparing the
11 nationally-recognized test to the state test, the
12 criteria the states could follow.
13 I would also point out that in this
14 criteria these assessments have to go through the
15 same peer review as all other state tests, and
16 that's where you have to make sure that the test
17 is valid and reliable and fair for all students
18 and it's accessible to all students, and that is
19 spelled out in 200.2.
20 MS. PODZIBA: New issue, Eric.
21 MR. PARKER: Just a question or point

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1 of clarity on the cognitive complexity and the
2 definition and possible measurement of that. I
3 just want to ask to get a clarification on that.
4 MR. ROONEY: I did try to explain this.
5 I don't know if I did a great job so I'll try
6 again.
7 So the language above it in B talks
8 about the difficulty of the assessment, and I
9 think the difficulty of the assessment is just how
10 hard or easy the items are in the test, and the
11 cognitive complexity is then trying to get at kind
12 of the higher-order thinking skills there are
13 included on the test.
14 So you can imagine that you have a very
15 difficult test that's just multiple choice items.
16 That doesn't necessarily get to the complexity of
17 the standards and the higher-order thinking skills
18 that may be very difficult to measure in multiple
19 choice tests.
20 So we added that component in C for the
21 cognitive complexity to get at that other aspect

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1 of assessments about the complexity of the tasks
2 that the student has to answer on the test.
3 So it's not just, is the test hard or
4 easy, it's about the kind of skills you're testing
5 on the test.
6 MS. PODZIBA: Does that help?
7 Ryan did you have a question on this
8 issue?
9 MR. RUELAS: No.
10 MS. PODZIBA: Delia.
11 MS. POMPA: This may be taking us back,
12 but it's been eating away at me.
13 When you explained why you didn't want
14 to take out "entrance into post-secondary," as I
15 understand your rationale it's to include in the
16 definition some sort of rigor.
17 Am I right about that?
18 MR. ROONEY: I think that's a fair
19 assessment.
20 MS. POMPA: And I wish, and I don't
21 have an answer for you, I wish we could find

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1 another way to define rigor.

2 I am concerned that "including entrance

3 into a post-secondary institute" sends a different

4 message. It may be over-interpreting what

5 Congressional intent is. And I'm surprised I'm

6 saying this.

7 But it does begin to shape for

8 districts which tests they pick. And really what

9 the language only says is "nationally-recognized

10 high school academic assessment". By adding this

11 language, it takes the "such as" of SAT and ACT

12 and makes it sound like it's what it's all about.

13 And it's not.

14 So how do we establish rigor without

15 talking about post-secondary entrance, when this

16 is really about high school academic assessment.

17 I'm afraid I don't have an answer. I'm

18 happy to think about it overnight. I just wanted

19 to put that on the table.

20 MR. ROONEY: We're open to suggestions

21 if people have them.

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1 I think in particular we're focused on
2 the nationally-recognized high school assessment,
3 and that's not just a test given in multiple
4 states. That doesn't to me sound like
5 nationally-recognized. That's just nationally
6 administered. And I feel like those two terms are
7 different and distinct.
8 I will point out that we did try to
9 clarify that's not just entrance in the
10 post-secondary institutions. That's also training
11 programs and courses of study, which tries to take
12 into account that there will be some students that
13 are not even going to college, and for that reason
14 they may want to take a different action. And for
15 that reason they should be able to take a
16 different course of action. I appreciate that.
17 We have a very narrow definition.
18 MS. PODZIBA: So Delia raised an issue,
19 didn't offer a proposal.
20 MS. POMPA: No, I didn't.
21 MS. PODZIBA: That's ok.

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1 I just want to know if people have a
2 proposal or people want to --
3 Rita?
4 MS. AHRENS: I just want a definition
5 of the current definition as proposed, because I
6 think it may exclude tests like the TIMS and APIZO
7 (phon) which I think ought to be
8 nationally-recognized.
9 So maybe we could include
10 "internationally benchmarked tests," and I don't
11 know nationally benchmarked, because we don't
12 really have a national benchmark, but some sort of
13 norm to introduce that rigor aspect.
14 But I do propose that we add
15 internationally benchmarked tests.
16 MS. PODZIBA: Ryan, is there a comment
17 on this question?
18 MR. RUELAS: No.
19 MS. PODZIBA: Aaron, on this question?
20 MR. PAYMENT: Yeah, so what I was going
21 to say earlier, and I think that this applies, the

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1 woman that was here, the doctor that was here on
2 the first day that went through data, we're using
3 a lot of terms and I think that we need to
4 understand what "nationally-recognized" means. I
5 don't know why they use that term. It probably
6 should have been "national norm."
7 So there are some specific things with
8 assessment and other populations, segregation, all
9 of those things that -- we probably need a very
10 brief primer because I think that might help us to
11 understand what appropriate language to use.
12 MS. PODZIBA: So is your suggestion
13 that we table Rita's proposal for you now until we
14 can get better better information or better
15 wording?
16 MR. PAYMENT: Yeah, not only her
17 proposal, but other references to
18 nationally-recognized and -- when we talked about
19 that. Because I'd like to know what the intent
20 behind it was, what the Congressional compromise
21 was, so that we're doing it consistently.

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1 MS. PODZIBA: So generally the
2 definition?
3 MR. PAYMENT: Yes.
4 MS. PODZIBA: And Rita, is that ok if
5 we move off on that one?
6 MS. AHRENS: Yes.
7 MR. ROONEY: I'm finding an opportunity
8 in this discussion. I think the reason we
9 proposed it is because there is no definition. I
10 don't know that we'll find a definition for
11 nationally-recognized high school assessment. I
12 think that "nationally norm" and
13 "nationally-recognized" are consistent.
14 I'm happy to put this on the table and
15 move to another issue.
16 MS. RIGLING: And
17 "nationally-recognized" is statutory. We didn't
18 make that up.
19 MS. PODZIBA: So you're just trying to
20 define it?
21 MR. PAYMENT: I agree we need to be

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1 informed on that so it's consistent.

2 MS. PODZIBA: So we're going to table

3 that for now.

4 Kerri, new issue?

5 MS. BRIGGS: On Page 2, number ii,

6 where the reference to "administering the same

7 national," blah blah blah, "to all high school

8 students," I didn't check this, our references,

9 bit I'm assuming that you don't actually need to

10 test every child who might take ninth through

11 twelfth, I mean the school district.

12 The intention is that if Texas is

13 testing at ninth grade, and Houston is testing at

14 tenth -- is that what this means? Houston would

15 have to assess in nine to twelve.

16 MR. ROONEY: Yes, kind of. If Texas

17 had a tenth grade test, and Houston took the SAT,

18 they would not take the SAT alternate rigors.

19 They would have to give the SAT to all kids that

20 were going to high school.

21 And whether that could be eleventh

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1 grade, I don't know that -- I mean the state may
2 want to come up with different rationale for it,
3 but I don't know that the regulation or the
4 statute or what we proposed would say it has to be
5 given at the same grade as the state's test.
6 It would have to be given to all kids
7 in high school consistent with the requirement
8 that they test once in high school.
9 MS. BRIGGS: I have another question.
10 On Page 3, the red letter C, Cognitive Complexity,
11 because we're referencing these tests have to meet
12 everything in 200.2. I'm not sure if we insert a
13 particular requirement just on this test that also
14 wouldn't apply everywhere.
15 I don't really know what that means.
16 MR. ROONEY: We'll do it again.
17 MS. BRIGGS: I mean, I've heard your
18 explanations about them. But I just find that
19 that's not a necessary addition.
20 MS. PODZIBA: Is that a proposal?
21 MS. BRIGGS: Yes, that's a proposal.

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1 MS. PODZIBA: Ok, there is a proposal
2 to strike C, "cognitive complexity of the
3 assessment" overall.
4 Discussion of that proposal.
5 Janel?
6 MS. GEORGE: I wonder if there is a
7 possible rewording could be -- I don't know if we
8 could say it there or if we can say it later, to
9 show comparable causeability levels. I don't know
10 if that would address the same thing where we're
11 measuring different ability levels.
12 MS. PODZIBA: Kerri.
13 MS. BRIGGS: I think when you're
14 considering how to measure a test would be
15 achievement levels. So the state has four
16 achievement levels. So all of that would be in
17 2002 point two, part of peer review. I don't
18 think it necessarily needs to be written in here.
19 MS. PODZIBA: So it sound like she's
20 not accepting your friendly amendment to the
21 proposal.

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1 So other discussion on the proposal to
2 delete C?
3 Thomas?
4 MR. AHART: Yeah, I would support that.
5 I think that what seems to me and what I thought
6 the original intention of the statute to be is
7 flexibility, and I feel like we're systematically
8 removing all ability to exercise flexibility.
9 So I would agree that we should really
10 follow the same guidance of 200.2.
11 MS. PODZIBA: Any dissent from deleting
12 C?
13 Ok, it looks like it's out.
14 Ryan, new issue?
15 MR. RUELAS: So, it's interesting,
16 because I was also kind of struggling like Delia
17 about the whole issue of the definition. I
18 thought to myself, ok, so are we only referring
19 then to the ACT SAT, considering we're talking
20 about the secondary, all those of higher --
21 post-secondary education and training programs,

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1 etc. But then when it became clear that we're
2 also talking about, you know, what certain states
3 like, for example, California, we have SBAC, you
4 know, and a reference to that, and it made me
5 think about the parents and the whole parent
6 aspect.
7 Is there anywhere throughout this whole
8 issue for parents and notifying them of the
9 opt-out possibility of the nationally-recognized
10 assessment? Because I think that's a right that
11 parents need to understand.
12 MS. PODZIBA: Someone have a comment
13 about that?
14 MR. RUELAS: I just want to bring it up
15 because of the fact that we're talking about the
16 rights and looking through it, I don't know if
17 it's present.
18 MS. PODZIBA: Is the opt-out general
19 across all or does it need to be specifically in
20 here?
21 I think your proposing that there needs

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1 to be a specific mention of the opt-out in this?
2 MR. RUELAS: What I'm asking -- I'm
3 asking is if anywhere throughout this entire thing
4 is an issue in regards to the opt-out?
5 Because I'm thinking about this right
6 now in regards to nationally-recognized
7 assessment, about that's where I've seen it the
8 most, you know, in regards to certain things about
9 parents not understanding this, you know, that the
10 they have the right to actually do that.
11 MS. PODZIBA: So when you say "this
12 whole thing," I don't know if you're referring to
13 this issue paper or more generally.
14 MR. RUELAS: This issue paper.
15 MS. PODZIBA: So Patrick, could you
16 answer that question?
17 MR. ROONEY: I can try to answer it.
18 No, it's not in this issue paper and
19 it's not in the package of regulations that we put
20 forward for discussion.
21 The regulations that we have designed

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1 and proposed for this discussion are really
2 focused on what are the requirements for states as
3 they design their assessment system and how they
4 administer their assessment systems to all
5 students.
6 There is a brief aspect of that in the
7 statute, and if you look at the statute, it's on
8 Page 32 if you want to go to that section of the
9 statute, to the small paragraph (a), that says
10 "Nothing in this paragraph shall be construed as
11 preempting a state or local law regarding the
12 decision of a parent to not have the parent's
13 child in the state academic assessments under this
14 paragraph".
15 That language is pretty clear, and it
16 didn't seem to need to be expanded on, and it's
17 not really about the design or administration of
18 the assessment.
19 It's saying there is this affirmative
20 right for parents, that it didn't seem -- if it
21 didn't seem to be necessary in this issue paper,

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1 it didn't seem to be necessary in 200.2 to 200.7
2 regulations that we're focusing on now in
3 designing of the assessments. Because it's very
4 clear that it is a regular occurrence in the
5 statute.
6 That was part of that rationale.
7 MS. PODZIBA: So no proposal here.
8 MR. RUELAS: No, I just had a question.
9 MS. PODZIBA: So next issue, Ron.
10 MR. HAGER: Thank you, and I appreciate
11 the idea of having the same definition for this
12 parallel modus. So I just have a minor addition
13 to your language, and it has to do with the
14 electronic file. There's confusion about that.
15 I think if you said "accessible
16 electronic file" or "screen reader accessible
17 electronic file," what happens is a lot of times
18 you scan something, it's quote, unquote
19 electronic, but it's not accessible to someone
20 that uses a screen reader on the page. You have
21 to take another step to make it be accessible.

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1 So just that qualification for the
2 definition of "electronic file" I believe will
3 cover it.
4 MR. ROONEY: You're looking at five,
5 romanette iii?
6 MR. HAGER: Yeah, the last phrase
7 there, yes, "electronic file," just adding that
8 qualifier to an electronic file.
9 MS. RICKER: Say it one more time.
10 MR. HAGER: Well, either "accessible"
11 or "screen-reader accessible". Probably
12 "screen-reader accessible" would be more specific.
13 I'm open to either one. But we just want to make
14 that --
15 Do you have a preference for that.
16 MR. ROONEY: So one clarification that
17 Kay has pointed out to me, if you look further,
18 the line above that, this is being provided in an
19 alternative format accessible to that parent. So
20 by definition the format needs to be accessible
21 for that parent. So if the electronic file is not

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1 accessible it wouldn't meet this requirement.
2 We've worked that one out too.
3 MR. HAGER: It is and I'll tell you
4 why. Guess who one of the biggest sinners is on
5 this point? OCR, when they send sent out their
6 decisions, they fax them, and they're not
7 accessible.
8 So we really want this "accessible to
9 electronic formatting" -- it is overkill but it's
10 such a problem so often for people with screen
11 readers that we really wanted to double dip on it
12 I guess.
13 And you shouldn't need to say it twice
14 but, it happens so often. All of the material
15 that the Department posted on the website with the
16 waivers, all of that was accessible to screen
17 readers. So it happens over and over again. I
18 guess my point is the normal structure.
19 MS. PODZIBA: This is all part of a
20 list of "including but not limited to". So you're
21 adding another example.

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1 So the proposal is to add screen
2 reader -- if you look at what she has, "electronic
3 file that is screen reader accessible".
4 MR. HAGER: Right, either way.
5 MS. PODZIBA: Comments or questions
6 about that proposal?
7 Tom on that proposal?
8 MS. HARPER: Could we add "to the
9 extent practicable," as it's included elsewhere?
10 MS. PODZIBA: So that's in two. So
11 where would you put that? So being ok, maybe let
12 me finish with this proposal and then you're
13 bringing up another proposal.
14 Is there any dissent from including the
15 "phrase screen-reader accessible"?
16 MS. PODZIBA: Ok.
17 And then Tom, you're raising another
18 issue. Where would you put "to the extent
19 practicable"?
20 MR. AHART: In the same place as it is
21 in romanette ii, "to the extent practicable to the

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1 individual," et cetera, et cetera.

2 MS. PODZIBA: Is there a discussion of

3 that proposal.

4 Kay?

5 MS. RIGLING: I think that the ADA

6 actually requires this and I don't think we could

7 add "to the extent practicable" there.

8 MR. AHART: Could we just defer to

9 that?

10 MS. PODZIBA: So another proposal?

11 Tom, could you tell us your alternative

12 proposal?

13 MR. AHART: I think this is included in

14 the ADA. I guess I'd have to take a little bit of

15 time and word Smith it tonight.

16 MS. PODZIBA: So maybe we can come back

17 to that.

18 MR. AHART: Thank you.

19 MS. PODZIBA: Richard, new issue?

20 MR. POHLMAN: I would like to look at --

21 it's under the LEA applications in C. We would

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1 like to add something in here that creates an
2 affirmative: "Charter LEAs requesting the
3 flexibility or to demonstrate that they have
4 conferred or consulted with their charter
5 authorizer prior to requesting the authority".
6 MS. PODZIBA: Do you have some language
7 on that, where it would go?
8 MR. POHLMAN: So We would just insert a
9 new romanette that says "if the LEA is a charter
10 school, provide assurance that the use of the
11 assessment is permitted under the terms of the
12 contract or performance agreement between the
13 charter school and charter school authorizer".
14 "If the LEA is a charter school,
15 provide assurance that use of the assessment is
16 permitted under the terms of the contract or
17 performance agreement between the charter school
18 and the charter school authorizer".
19 It's again just ensuring that a
20 consultation occurs for another group of charter
21 schools.

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1 To Aaron's point, there are different
2 functionalities in the way charter schools look at
3 states, so this would be for an independent
4 charter LEA creating the affirmative obligation
5 for them to go to their authorizer and then simply
6 have this obligation prior to the assessment.
7 MS. PODZIBA: Discussion of that
8 proposal.
9 Aaron?
10 MR. PAYMENT: So, do we need to modify
11 it by referencing -- we know that it has to follow
12 the state, ultimately the state, so we want to
13 make that a modifier.
14 MR. POHLMAN: Can you say it again?
15 MR. PAYMENT: So it has to be
16 consistent with the state. So to allay any
17 concerns do we want to reference that?
18 Where is the language that you cited?
19 MR. POHLMAN: So it's under C. It's
20 under the LEA Applications. So this is once the
21 state has created the list of assessments from

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1 which the nationally-recognized assessment is
2 written, then an LEA may apply to the state to use
3 those.
4 MR. PAYMENT: Right.
5 MR. POHLMAN: In the LEA application,
6 what we're asking is the charter LEA is being
7 conferred with, prior to making that request, that
8 they confer with their authorizer. Or, in this
9 language actually what is say is it's permitted
10 the under the terms of the contract and
11 performance agreement.
12 MR. PAYMENT: So what about "consistent
13 with state law"?
14 MR. POHLMAN: I'm fine with the
15 amendment because I don't think it really --
16 MR. PAYMENT: I'm good without it too.
17 MR. POHLMAN: I don't think it adds
18 much.
19 MS. PODZIBA: Thomas?
20 MR. AHART: Under romanette ii --
21 MS. PODZIBA: Wait, is this on

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1 Richard's proposal?

2 MR. AHART: No, I'm sorry.

3 MS. PODZIBA: Marcus?

4 MR. CHEEKS: My concern with this last

5 proposal is consistency with the law. I think

6 states have been asking for and given flexibility

7 to determine and identify schools in the

8 districts.

9 Charters were identified under state

10 law. We're giving an impression and precedence I

11 think by teasing out special segments of this

12 nature as if they're different, and I want to ask

13 the question of the Department, if that is

14 something that could be interpreted by this

15 proposal and the most recent proposal we did

16 around charter schools as if they are independent

17 of what the state may define as an LEA.

18 MR. ROONEY: I don't know that I can

19 answer that. I think for this one, this is a

20 charter that is its own LEA that I think, to

21 Rich's suggestion, would just say, In that case,

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1 that LEA needs to assure that its charter
2 authorizer will let it do this before it can ask
3 the state to do it. Is that right, Rich?
4 I think then you're treating this
5 charter LEA like any other LEA that we just have
6 this extra agreement in this paragraph C. And the
7 the one before is it just about public
8 consultation or consultation with the schools.
9 I don't know how to address that
10 question, Marcus.
11 MR. POHLMAN: Marcus, do you have a
12 specific concern that maybe we can specifically
13 speak to?
14 MR. CHEEKS: My concern is still, the
15 aspect that the charter school faculty, which is
16 in my state, and probably most, codified by state
17 law, so if it's in state law, I'm concerned about
18 the rationale to add elements that would treat the
19 charter school setting different than what we
20 would at face value treat the regular LEA.
21 MR. POHLMAN: Can I respond to that?

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1 Marcus, I think it's a great point, but
2 I think that there are, you know, fifty-two
3 different charter laws, and I think that each of
4 them consider the role of the authorizer
5 differently.
6 In some instances, right, the
7 authorizer is who makes that determination to give
8 that LEA status under state law. Then therefore
9 the state office considers them an LEA, because
10 there are dual levels of authority at play, and
11 that the authorizers in the country are concerned
12 that charter LEAs cannot scoot around their
13 authority and go directly to the state to ask for
14 a different assessment, and then once approved,
15 come back to the charter authorizer and say, Look
16 the state approved this assessment," but that is
17 outside of what the charter authorizer's
18 accountability claim and accountability measures
19 are for that school. Does that make sense?
20 So this is just a protection for those
21 authorizers to say, There's a duty on the LEA

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1 requesting to go to that authorizer and say -- or
2 to say, This is allowed under my charter
3 agreement.
4 And it shouldn't really interfere with
5 any stated state laws. This is merely an
6 assurance for the LEA requesting this assessment.
7 MS. PODZIBA: Kerri, is your comment on
8 this question?
9 MS. BRIGGS: Yes, but I think what I
10 prefer to do is just talk with Richard during the
11 break. I'm not concerned about that language.
12 MS. PODZIBA: Kay?
13 MS. RIGLING: I was just going to ask
14 two questions about clarification.
15 To Marcus' point, would it help to
16 rephrase to say "if a charter school is eligible
17 under state law," to make it clear it's state law
18 that governs whether the charter school is an LEA.
19 And then the phrase "is consistent with state
20 law," I'm wondering if that should be -- you could
21 take it out. "Or is consistent with state charter

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1 school law".

2 MS. PODZIBA: Kerri, does that

3 potentially respond to your concerns.

4 MS. BRIGGS: No.

5 MS. PODZIBA: So you want us to table

6 this for now? Is that my understanding? Ok.

7 Mary Cathryn. New issue.

8 MS. RICKER: Alright, Page 4, so first

9 my perfunctory question is that, somewhere the

10 word "parents" is actually defined as anyone with

11 guardianship. Ok, beautiful.

12 So then I got hung up with romanette i.

13 The phrase "uniform format" seems very

14 monocultural to me, or the product would be sort

15 of monocultural.

16 My suggestion -- although I will be

17 honest, I am open to someone who thinks they can

18 write this and help me get through that

19 perception -- is that it would be "be in an

20 understandable format that is accessible," or

21 format with "S" in parents, "format accessible to

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1 the family population in the LEA," because that
2 may mean that the format is not uniform.
3 So, I can talk to people over the
4 break, too, just to see --
5 MS. PODZIBA: I really was hoping we
6 could get through this before the next issue paper
7 before the break.
8 MS. RICKER: I can bring us back to
9 number ii which I strongly object to as well.
10 MS. RIGLING: I think this is used
11 frequently in the law when it is talking about
12 communications with parents. I'm a little
13 reluctant to change it.
14 MS. RICKER: Statute is a place where
15 you sometimes see deeply imbedded
16 institutionalized practices that are not open to
17 diverse populations.
18 MS. PODZIBA: Maybe it's time to take a
19 break. Ok, why don't we take a ten-minute break
20 and be back at 3:45.
21 (Recess taken.)

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1 MS. PODZIBA: We'll reconvene as soon
2 as everyone's back in their seats.
3 MS. PODZIBA: I know that Richard and
4 Kerri worked something through, so maybe we can go
5 to that until Patrick gets here.
6 MR. POHLMAN: I'm going to propose it
7 then.
8 MS. PODZIBA: Let's just give Judy a
9 second so she can get that.
10 Ok.
11 MR. POHLMAN: So it should read, "if a
12 charter school is an LEA under state law provide
13 and assurance," I guess "and assurance, the
14 school" -- "that the use of assessment is
15 consistent with state charter school law and it
16 has conferred" -- I'm sorry, "and it has consulted
17 with the charter school law".
18 MS. RIGLING: Could I make one
19 modification? I was just told that in Title IV of
20 the Charter School Program, they used the term
21 "authorized public chartering agency" instead of

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1 charter school authorizer.

2 Do you think we could use that term?

3 MR. POHLMAN: I totally support the

4 present amendment.

5 MS. RIGLING: So it would be

6 "authorized public chartering agency".

7 MR. POHLMAN: I imagine we should like

8 to make a similar change to my amendment earlier

9 in A(3).

10 MS. PODZIBA: Alright, any questions

11 about that proposal? I'm assuming you can sit in

12 for Patrick on this one, Kay.

13 Ok, is there any dissent from accepting

14 this proposal?

15 Ok. Great.

16 Mary Cathryn, I know we were looking at

17 yours, but I think Patrick wanted to respond to

18 that.

19 Thomas I think you had a proposal on

20 the ADA piece of that, so maybe we can get that in

21 play. Just remind us where that goes.

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1 MR. AHART: Yeah, near the bottom of
2 Page 4, 5, romanette ii and romanette iii.
3 Under romanette ii I would suggest it
4 read "B, to the extent practicable written in the
5 language the parents and guardians can
6 understand". And on romanette iii -- or I guess
7 semicolon.
8 And under romanette iii, "being upon
9 request by a parent or guardian of the individual
10 with a disability defined by the Americans with
11 Disabilities Act provided in an alternative
12 format".
13 MS. PODZIBA: So it's to delete the
14 ends of both of those romanettes as currently
15 written?
16 MR. AHART: Yes, yes.
17 MS. PODZIBA: So open the floor for
18 discussion of that.
19 Rita?
20 MS. AHRENS: I think part of the issue
21 here is providing linguistically and culturally

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1 appropriate information that may not always be
2 written.
3 So I think the previous language was
4 better for the purposes of limited English
5 proficient parents and other cultures.
6 MS. PODZIBA: Are you referring to both
7 or one?
8 MR. AHRENS: To ii. I would like to
9 keep the "if not practicable to provide the
10 translation for such parent or guardian or
11 presented in a culturally linguistic manner".
12 MS. PODZIBA: Wait, are you adding
13 something?
14 MS. AHRENS: Yes, I did add something.
15 MS. PODZIBA: Ok. First let's do
16 Thomas' proposal, and then we will take a new
17 proposal. It sounds like you would not support
18 Thomas' proposal.
19 MS. AHRENS: Correct.
20 MS. PODZIBA: Other discussion.
21 Ron.

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1 MR. HAGER: I think that that language,
2 representative of native language parents, I think
3 that's pretty consistent across a bunch of
4 regulations. I think they didn't draw that from a
5 hat. I think they had that common elsewhere, so I
6 may have to defer to Kay and Patrick on that one.
7 For the other one, you have to go a
8 little further, if you want to eliminate the
9 example. I think you have to at least go that
10 far.
11 So I would agree with part of Thomas'
12 proposal, but not the whole thing.
13 MS. PODZIBA: So, I don't know, Rita,
14 if you could live with taking out the examples on
15 romanette iii?
16 MS. KING: Can I also comment?
17 MS. PODZIBA: Yes, of course you can.
18 I just wanted to check in with Rita.
19 MS. AHRENS: I'll defer to the experts
20 there.
21 MS. PODZIBA: Ok, Liz.

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1 MS. KING: I just wanted to get some
2 better clarity or not why we would take out the
3 examples since it doesn't change the legal
4 responsibility. I'm not sure what the objective
5 is of taking out these examples. These are
6 probably the most common examples of the types of
7 ways that you would do this. So in ensuring that
8 the existing legal responsibility is complied
9 with, it seems like this is helpful.
10 So, if you could just sort of clarify
11 more why you want to take out the examples.
12 MR. AHART: I just don't want it to be
13 duplicative of other laws that we already have to
14 follow in this regard and for things that are in
15 currently in litigation, creating a bunch of whole
16 different rules at additional expense that will
17 have to be modified later anyway.
18 MS. KING: I'm missing why specifically
19 having the examples has an effect on any of those
20 things.
21 So like the examples are in answer to

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1 it -- so if someone reading this says, What does
2 it mean? And what does "alternative format"?
3 Mean, and then they say, Oh, it means things like
4 Braille, large print and electronic files.
5 MR. AHART: Yes, to me that smacks of
6 things that I would better fit under Guidance.
7 MS. PODZIBA: Lisa, did you want to
8 jump in on this?
9 MS. MACK: I was just going to suggest
10 that if we don't put the actual wording, put the
11 reference that Thomas might be talking to, because
12 I think that we have shown in this discussion
13 without context, some of us don't know what it's *
14 referring to.
15 MS. PODZIBA: Patrick?
16 MR. ROONEY: I put my card up actually
17 for Kay. So I'll let Kay talk.
18 MS. RIGLING: I was just going to
19 react to the changes of romanette ii about "orally
20 translated". I think that language is here based
21 on what the Department understands to be the

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1 requirements under Title VI.

2 So I think it really is important to

3 keep that language.

4 MS. PODZIBA: So is there dissent to

5 the change to romanette ii?

6 MS. RIGLING: It's okay the way it is

7 now.

8 MS. KING: Yeah, ok. If we're agreeing

9 to that, it's okay.

10 MS. PODZIBA: So, the proposal was to

11 remove it, so I just I want to be clear.

12 Is there dissent to remove that from

13 under -- the proposal was to put a period after

14 "understand" and to remove everything that

15 follows.

16 Is there dissent on that proposal?

17 MS. POMPA: Yes.

18 MS. RICKER: Yes.

19 MS. PODZIBA: Thank you.

20 Moving to romanette iii, the current

21 proposal I believe is to -- well, Thomas I think

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1 there was a friendly amendment that it had to go
2 up to "parent or guardian" and a period after
3 that.
4 Is there dissent to removing those
5 examples?
6 MR. HAGER: I want to clarify my
7 comment. After hearing from Thomas, I think it's
8 better to keep those in. These are legal
9 requirements. School districts, other people need
10 to be aware of the examples.
11 So I'm going to --
12 MS. PODZIBA: So you're going to
13 dissent?
14 MR. HAGER: Yeah, I'm going to dissent
15 from my own amendment. Sorry.
16 MS. PODZIBA: Alright, thank you.
17 We had a proposal from Mary Cathryn
18 that was -- can you help me, where was that?
19 MS. RICKER: Page 4, romanette i
20 underneath --
21 MS. PODZIBA: "Uniform format".

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1 MS. RICKER: Actually, in having the
2 chance to talk with some parents and with parent
3 advocates at the table afterwards, and
4 understanding that the gist of it and the history
5 that the phrase "uniform format" has in case law
6 or impact, so the suggestion of moving the clause
7 that I to being a new romanette ii, so "be in an
8 understandable and uniform format" would stay
9 romanette i, and then romanette ii would be "is
10 accessible to the family populations in the LEA in
11 multiple formats," getting to the idea that there
12 may be, as we say in education, multiple
13 modalities, but that would need to have --
14 MS. BECKER: Say it one more time.
15 MS. RICKER: Of course: "Is accessible
16 to the family populations in the LEA in multiple
17 formats".
18 MS. PODZIBA: Kerri, is your comment on
19 this proposal?
20 MS. BRIGGS: Yes.
21 MS. PODZIBA: Ok.

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1 MS. BRIGGS: The regulatory language
2 around this -- around the statute, I don't think
3 we need to add another one, especially when -- as
4 my understanding is, these things that are in
5 here, the standard were the things that we say
6 about -- that we say about this parent.
7 I don't know how something is uniform
8 and then multiple format at the same time.
9 MS. RICKER: Do you want to make more
10 comments on that?
11 MS. PODZIBA: Are there other comments
12 on that?
13 Regina?
14 MS. GOINGS: I have a question, could
15 you explain what multiple formats, what that would
16 include?
17 MS. RICKER: Sure. What I'm trying to
18 get to is the cultural responsiveness of a school
19 district, and, you know, the idea that for just
20 putting something, one paragraph in five different
21 languages, and having it on a piece of paper that

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1 goes home in backpack mail, might not be enough to
2 get to a family population, where it needs to get
3 to.
4 And so, while you may need it in
5 writing and you may need it orally, and an
6 opportunity for interaction, or it may need to
7 also include a format that includes storytelling
8 as a way of presenting the information, or you may
9 need to include it in, you know, obviously like
10 other multiple communication measures, and that
11 that's part of -- that's what we're trying to get
12 at, is that you're a culturally responsive
13 district and you're thinking through, not just
14 what is easy for you as a district to do, but what
15 is truly engaging for parents to accept.
16 MS. PODZIBA: Further discussion.
17 Rita?
18 MS. AHRENS: Maybe we could change
19 "multiple format" to "culturally responsive
20 format".
21 MS. RICKER: That would be fine.

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1 That's a better description

2 MS. PODZIBA: Kerri?

3 MS. BRIGGS: I wonder why the other

4 things would be practicable able but this one has

5 to be required. It just -- I get it, I get we

6 would get it, but I just think that this is too

7 much.

8 MS. PODZIBA: Ok, Richard?

9 MR. POHLMAN: So can I ask, because I

10 think we're also interjecting some terminology

11 that may be a little bit newer for many LEAs in

12 talking through the culturally responsive format,

13 and I think it's really great and it really would

14 encourage me as a school leader to think

15 differently.

16 However, I think that it would be best

17 to interject these items again, with some guidance

18 that would help us as school leaders to go back to

19 and better understand.

20 Because once we put it in regulation,

21 then it becomes a requirement and then also

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1 subject to a number of interpretations that are
2 going to end up in Guidance anyway.
3 So it's just my thought to sort of
4 encourage a consensus also, because I'm hearing
5 things about putting so much in.
6 MS. PODZIBA: Is there a dissent this
7 on this proposal?
8 Derrick?
9 MR. CHAU: I would want to add the "to
10 the extent practicable" as well, because it's so
11 new. We want to add that piece.
12 MS. PODZIBA: Ok, is that ok.
13 MS. RICKER: What was it?
14 MS. PODZIBA: "To the extent
15 practicable".
16 MS. RICKER: I would understand that
17 historically "to the extent practicable" means by
18 our most marginalized population that they can try
19 and -- I completely understand to help us move on,
20 if this is what it takes, but I think it leaves us
21 in a place where we have an opportunity to scrub

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1 some institutionalized hampering of really
2 robustly meeting the needs of our full population.
3 MS. PODZIBA: Marcus?
4 MR. CHEEKS: I'm not sure how practical
5 this is from a state agency standpoint.
6 It's difficult to -- and I think we
7 mentioned this in some earlier conversations, when
8 you get down to -- in my home state there are two
9 hundred plus languages. Someone is going to run
10 into a problem meeting that letter of the law if
11 there is not "to the extent practicable".
12 So I just, I think we're going to run
13 into a problem.
14 MS. PODZIBA: Is there dissent from
15 accepting this proposal?
16 MR. CHEEKS: Absent the term "to the
17 extent practicable," yes.
18 MS. PODZIBA: I guess, Mary Cathryn, it
19 sounded like you were begrudgingly accepting.
20 MS. RICKER: Yeah.
21 MS. PODZIBA: Ok, so, as written behind

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1 me, is this acceptable? Yes?

2 MS. PODZIBA: So the proposal is to add

3 to romanette ii(b), "to the extent practicable,

4 accessible to the family populations in the LEA in

5 a culturally responsive format".

6 Is there any dissent?

7 Tony.

8 MR. EVERS: I mean, it's going to be

9 auditors that kind of respond and figure out

10 whether this is happening. I'm just not -- I just

11 think this is a clumsy way of dealing with it

12 frankly. I mean, we will have to train our

13 auditors around this issue. It's just a problem.

14 I mean, I'll be glad to be helpful, but

15 please consider the practicality of some of these.

16 MS. PODZIBA: Aaron.

17 MR. PAYMENT: Culturally responsible --

18 I've heard the term culturally competent. Is

19 there a distinction between "responsive" and

20 "competent"?

21 MS. RICKER: "Responsive".

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1 MR. PAYMENT: There is agreement on
2 culturally competence. I'm wondering what is
3 culturally responsive as different from culturally
4 competent.
5 MS. PODZIBA: Marcus?
6 MR. CHEEKS: This gets muddier and
7 muddier by the minute. "Culturally responsible"
8 really stands out. "Responsive" really stands
9 out. I know the African-American culture, I would
10 question others knowing that it's clear.
11 This is a slippery slope, the more I
12 think about it, really a slippery slope.
13 MS. PODZIBA: So here's kind of what
14 I'm sensing is that people are uncomfortable with
15 it.
16 MS. RICKER: Mm-hmm.
17 MS. PODZIBA: And I don't know if
18 anybody wants to dissent -- well, I'll just leave
19 it to you all people. I'm just going to call the
20 question.
21 Is there any dissent on this proposal?

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1 MR. POHLMAN: Yes.

2 MS. PODZIBA: Yes, ok.

3 Aaron.

4 MR. PAYMENT: So I would alternately

5 propose "culturally competent format". That's

6 known, it's understood. There's training on

7 cultural competency, and that is not

8 misunderstood.

9 MR. CHEEKS: I'm sorry?

10 MR. PAYMENT: I'm proposing

11 alternately -- we struck down the previous one.

12 I'm proposing "culturally competent format". That

13 is understandable language. If you don't

14 understand it, you could go read it, but that is

15 understood language.

16 There's training on it. Usually

17 there's a requirement of some litigation that if

18 certain things are not met if you're not

19 culturally competent. Its agreed upon.

20 MS. PODZIBA: Lisa?

21 MS. MACK: I understand your point. I

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1 just want to say, the difference between competent
2 and responsive is one is knowledge, one is action.
3 MS. RICKER: Oh, yes.
4 MS. PODZIBA: Do we need to have
5 further of this, or can a call the question?
6 Are there any comments that need to be
7 said?
8 Marcus?
9 MR. CHEEKS: You can call on that
10 question, but the dissenting members, there are
11 are specific individuals that are capable of
12 dissenting versus those that are not, correct?
13 MS. PODZIBA: Right.
14 MR. CHEEKS: So, only those should be
15 voiced on the dissent.
16 MS. PODZIBA: I'm going to call a
17 question, if you're an alternate --
18 Rita?
19 If you've got a green dot, you don't
20 have the authority to dissent.
21 Rita.

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1 MS. AHRENS: I just want to make a
2 quick comment on this that I think it's really
3 important in the spirit of promoting equity as
4 well as in the spirit of Title VI, which does
5 require that we provide opportunities -- well that
6 we actually ensure that parents of limited English
7 proficient children -- or limited English
8 proficient parents have rights to meaningfully
9 participate.
10 And so I think this language comes at a
11 good compromise that does say, to the extent
12 practicable that you can do it, B, culturally
13 competent, then do it.
14 So I think that's a fair compromise and
15 I would like us to consider that as we vote.
16 MS. PODZIBA: I'm going to call the
17 question, if that's ok.
18 Is there any dissent from accepting
19 this proposal?
20 Eric?
21 MR. PARKER: Yes. I think the dissent

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1 comes from just the practicality of it and the
2 implementation based on I guess regulatory
3 language versus Guidance I think is kind of what
4 we're looking at. Just looking at how it's grown
5 in the last ten minutes and how it's, you know --
6 it's just the feasibility and practicality of it
7 from the implementation standpoint, I think it's
8 in question.
9 MS. PODZIBA: Aaron?
10 MR. PAYMENT: Ok, so, I'm going to use
11 an example. So, just on Tuesday night we had two
12 distinct Councilmembers who were voting against
13 getting a new public manager in their unit because
14 they want the current manager to be elevated and
15 assisted, and they were so set on that that they
16 were going to vote no against getting a clinic
17 manager in their district...
18 Until I took them aside and said I'm
19 going to let your constituents know that you're
20 voting against your own unit. And then boom, they
21 understood.

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1 So this is the compromise. "To the
2 extent practicable," I don't like that language at
3 all, because that call for states to make up
4 excuses or whatever. However it is a compromise.
5 Maybe it is better under Guidance, but
6 I think that having been through this and
7 advocating that it be stronger regulations, is
8 this still allows the state to decide whether it's
9 practicable, but it also elevates the concept of
10 cultural competency in that it be done
11 appropriately. We could use the term valid --
12 MS. PODZIBA: In all fairness, I called
13 the question. I think there was dissent. If I
14 have to go back over every dissent --
15 MR. PAYMENT: Oh, I wasn't sure if
16 Eric's comment was after the dissent.
17 MS. PODZIBA: I think he was explaining
18 his reason for dissenting.
19 Is that correct, Eric?
20 MR. PARKER: Yes.
21 MS. PODZIBA: Yeah. So I think we need

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1 to keep going. I don't see cards for any new
2 issues on this issue paper.
3 The outstanding piece is the
4 definition. And I think the Department wants some
5 time to come back or I think, Delia offered to
6 think about that.
7 MS. POMPA: I did.
8 MS. PODZIBA: And possibly offer some
9 discussions and we will come back.
10 So we're going to move quickly to Issue
11 One. We've seen a lot of this language already,
12 so it shouldn't be -- it shouldn't be that
13 cumbersome.
14 MR. ROONEY: Fingers crossed.
15 MS. PODZIBA: And I have been asked to
16 say if we get through this then we will get back
17 to the definition. So let's move forward.
18 MR. ROONEY: So turning to Issue Paper
19 1, which the last tile was first and now is the
20 last issue paper, you saw much of this language
21 before. We made a couple changes based on the

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1 conversation and the discussion we had last time.
2 So I'm just going to quickly run through those and
3 then open up for discussion.
4 Under C1 ii, there is now a
5 strike-through in the second sentence. That was
6 actually that one sentence. I think in the
7 discussion last time we talked about how states
8 are going to have a computer-adaptive test. And
9 remember it's something states may have but don't
10 have to have. But if a state chooses to have an
11 adaptive test, that we include information that
12 the assessment needed to provide valid and
13 reliable information. And then I think someone
14 had made a proposal that we make sure it's valid,
15 reliable and fair and then there was discussion
16 about whether that was appropriate or not.
17 We took all of that discussion back and
18 realized that all of that actually seemed
19 unnecessary because the assessments and the
20 adaptive test has to go through the state and peer
21 review requirements under 200.2, which talks about

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1 the technical quality of the assessments,
2 including that they're valid, fair, reliable, that
3 they follow the principals of Universal Design For
4 Learning. All of that applies to all of these
5 assessments. So it seems duplicative to keep it
6 here. As a result we shortened this in our
7 attempt to be brief. So hopefully that makes
8 sense to all you people.
9 The other change we made is in the
10 paragraph right below it, Number 2, where we had a
11 phrase at the end of the last paragraph, the end
12 of the last full line that's now struck out, that
13 said "and any other reports and reports to the
14 Secretary;" "any other reports and reports to the
15 Secretary," and someone asked the question about
16 what that could be and it seemed awfully vague,
17 and in retrospect we agreed that was a little
18 vague.
19 Now instead we reference Section 1111H
20 in the Act, and that is where the law refers to
21 all of the state and local reporting requirements

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1 under ESSA.

2 So, we just tried to be clear that

3 those are the reports that were meant and that is

4 what we're referring to.

5 And then the third change, from what

6 you saw before, shows up on Page 3 of the issue

7 paper. It shows up here together. I think I

8 mentioned this yesterday, but as part of our

9 reorganization after the discussion, we realized

10 we should break this into the sections where it

11 makes sense.

12 So computer-adaptive tests are

13 permitted for states, among all assessments, among

14 general assessments, and so for that the text you

15 see on Page 2 would show up in 200.2 of the full

16 package.

17 And then the law also allows for an

18 adaptive alternate assessment and an adaptive ELP

19 assessment, and rather than include them here in

20 200.2, we actually moved them to where we talk

21 about the requirements for alternate assessments

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1 in 200.6C and the requirements for alternate
2 assessments for ELP assessments in 200.6 (f)(3).
3 So this language, which is pulling out
4 what's in the statute for computer-adaptive
5 alternate assessments and computer-adaptive ELP
6 assessments separately, will then be placed in the
7 regulations in the full package where we talked
8 about those assessments.
9 So we didn't make any substantive
10 changes to them. We just put them in the spot
11 where it actually made more sense for them to be.
12 So I'm going to stop. That's my
13 presentation. It's open to discussion.
14 MS. PODZIBA: Ok, so everything's open
15 and we will just do it the way we were doing the
16 last one.
17 Delia.
18 MS. POMPA: Patrick, earlier you
19 mentioned that across all ability levels was in
20 200.2. Could you show me where it is? I couldn't
21 find it.

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1 MR. ROONEY: So you're asking a
2 question that's not about the adaptive test.
3 You're asking a question about acceptance in
4 general?
5 MS. POMPA: No, it's related.
6 MR. ROONEY: We don't use those exact
7 words. I think we talk about the test being valid
8 and reliable for all students. That would include
9 making sure that it is an accurate measure of what
10 students normally do and that they have multiple
11 achievement levels, as required by the law.
12 MS. POMPA: So it's not explicit.
13 MR. ROONEY: Right, it doesn't use the
14 language about disability levels. That doesn't
15 show up in the language.
16 MS. POMPA: Thank you.
17 MS. POMPA: Other questions, comments,
18 revisions on this issue paper?
19 MS. RICKER: I have a question.
20 MS. PODZIBA: Ok.
21 MS. RICKER: Patrick, I think my

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1 question is for you. Is there any place other
2 than that this where there is a reference that
3 assures computer-adaptive assessments or tests
4 will not be given unless there is adequate
5 technology? Or is there any way to put it after
6 the state has determined it has technology
7 adequate to handle a whole state of students?
8 MR. ROONEY: That's a good question,
9 Mary Cathryn. I think you may have asked that
10 question and a few others asked that in the last
11 session.
12 We didn't change that in the
13 regulations. I think we struggled with thinking
14 of how to put that in and whether that's the kind
15 of thing that belongs in regulations versus the
16 kind of thing that is guidance to the state as
17 they're thinking about moving to a
18 computer-adaptive test to make sure that they have
19 an assessment that can be administered statewide
20 and that is accessible to all students.
21 But it's not here. I think we

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1 struggled with what would be a reasonable way to
2 put it in regulations versus Guidance for state
3 with a development assessment that they need to
4 make sure that they're providing support to
5 districts to support the administration of the
6 test they're giving.
7 MS. RICKER: I'd appreciate that,
8 because that's something that can move forward on.
9 It is a real accessibility issue, when you log on
10 and you get the spinning wheel of death, and then
11 in the school you log off, and then they have an
12 announcement that says, Everyone is now testing.
13 Would you please not use the Internet because the
14 bandwidth is restricted, and you log off, and you
15 log back on and now you're on question five
16 instead of question eight.
17 I really appreciate that you are
18 thinking of where to address that, because I
19 completely understand, we're going to keep
20 creating tests like this, but it is stressing
21 systems that are already completely stressed. And

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1 to say we struggle to keep up is downplaying it.
2 So thank you.
3 MS. PODZIBA: Audrey?
4 MS. JACKSON: I just second that, and
5 will keep it really brief, but I love that you're
6 thinking about it in guidance areas, and I think
7 that states will be motivated, hopefully, to
8 consider it, because their students will perform
9 better, but to also include access to the testing
10 window, so it's over cured.
11 MR. ROONEY: I would say that this is a
12 larger issue than computer-adaptive tests, because
13 a lot of states have computer-based tests that
14 they administer that are not adaptive. This is
15 not something that you just want the states
16 thinking about as an adaptive test. They should
17 be thinking about it as they are developing a
18 computer-adaptive assessment.
19 MS. RICKER: That is a great
20 clarification. Thank you.
21 MS. PODZIBA: Anything else on this

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1 issue paper?

2 Is there any dissent from adopting a

3 tentative agreement on Issue One?

4 Congratulations. That's true progress.

5 We've been making progress all day.

6 So, Patrick, do you want to go to Issue

7 6, or do you want to go to the definition?

8 MR. ROONEY: Let's go to the definition

9 if it's okay. If people feel like they have had

10 time to consult with their colleagues around the

11 table and they have had some discussion is my

12 guess is we'll have some comments on the

13 discussion and getting a sense of the room how

14 people are dealing with it and how it would be

15 helpful.

16 MS. PODZIBA: This is the handout from

17 this morning. It's all red, half a page, starts

18 with the term "students with the most significant

19 cognitive disabilities".

20 And Patrick presented it this morning,

21 so I'll just open the floor for discussion.

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1 Tony?

2 MR. EVERS: I hate to go back to this,

3 but we have -- the federal government hasn't been

4 able to find this for several years.

5 The committee was unable, maybe because

6 of time, was unable to come to terms with this.

7 I believe that it is best left to the

8 state. I actually consulted with our special ed

9 folks back in Madison, but they believe this

10 definition will actually expand the number of

11 children that are identified.

12 So I would prefer to leave this to the

13 state. My preference would be not to accept this.

14 MS. PODZIBA: Lisa?

15 MS. MACK: My concern is that this

16 appears in basically every discussion we've had

17 this week, and again one of the things that I

18 brought up to the subcommittee is that there is an

19 issue of portability going from state to state,

20 what does this exactly mean. It's something

21 that's defined by the IEP team as understood. A

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1 parent is a part of that team, but as we go from
2 school district to school district, state to
3 state, it could be somewhat subjective. I think
4 it needs to be refined.
5 And I feel as if this definition is
6 kind of a compromise to what we have discussed.
7 It allows flexibility to the schools and the
8 states under the ideas that we have discussed thus
9 far and provides clarity for families as well.
10 MS. PODZIBA: Alvin.
11 MR. WILBANKS: I would just concur as
12 Tony mentioned that we not accept the proposal.
13 MS. PODZIBA: Regina?
14 MS. GOINGS: I agree it does vary from
15 state to state. Each state has its own
16 interpretation of what is significant in terms of
17 of adaptive behavior and education. It's just a
18 component that helps to define statewide what
19 students -- that's a hard term to wrap your head
20 around, because what's significant in one state is
21 not significant in another state.

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1 MS. PODZIBA: Marcus.

2 MR. HAGER: If I'm reading this

3 correct, is the definition coming from IDEA?

4 MR. ROONEY: No, this is not defined in

5 IDEA. This is our proposal of -- it's referenced

6 in a subset of children with disabilities as

7 defined under the IDEA. So this is the student

8 with the most significance cognitive disabilities

9 has to be a subset of all children with

10 disabilities.

11 So you couldn't pick -- a child with

12 the 504 plan would not qualify under this

13 definition, unless they were also defined as a

14 child with disability under 200.6C of the IDEA.

15 MR. CHEEKS: IDEA does not define this

16 term, but our interest would be to define it under

17 title in the ESSA?

18 MR. ROONEY: Yes. I think our rational

19 for proposing this definition is that this term

20 appears only with the students then who are

21 assessed gets an alternate assessment.

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1 So, because that is an assessment
2 requirement that states have an alternate
3 assessment aligned with the alternate achievement
4 standards for students with the most significant
5 cognitive disabilities, that providing some
6 guidance for the field about what constitutes a
7 student with the most significant cognitive
8 disabilities would help states in implementing the
9 law, notwithstanding Tony's comments and others.
10 If we don't define it, Tony's point,
11 states will all individually have to come up with
12 a definition, which is how they have been
13 operationalizing this prior to now, or currently.
14 MS. PODZIBA: Lynn?
15 MS. GOSS: While I agree that we don't
16 need to actually define it, if we have to do
17 anything, there is no reference here to the IEP
18 team. So, I think that we just need to be
19 cognizant of that, and because they go through all
20 of their testing to qualify and if we don't
21 include the IEP team, then it's even more

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1 subjective.

2 MS. PODZIBA: Liz?

3 MS. KING: Yeah, I will just say as a

4 general principal, which I do realize this is a

5 very high priority. The inclusion of this is a

6 very high priority for our civil rights

7 constituency.

8 It would be helpful to hear, for the

9 sake of the conversation, and in general I think

10 as we're comfortable with this, there may be

11 tweaks we would make, it may be helpful to hear --

12 also one backup. This is not an IPA because the

13 children with the most significant cognitive

14 disabilities in the ESSA term, but it wouldn't be

15 ESSA, which is why there would be and should be a

16 definition in the regulation, criteria in the

17 regulation relative to this law, because it

18 matters not for the sake of the services provided

19 to individual children under IDEA but for the sake

20 of the one-percent cap and the way that assessment

21 and accountability work under ESSA.

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1 So I think that's an explanation for
2 that.
3 But it would be really helpful to hear
4 from both Tony and Alvin that there is a
5 definition, or if we believe we can identify a
6 definition sort of what other things would need to
7 happen to these words to make it something that
8 you could work with. I think it would be helpful
9 to hear more on that.
10 MS. PODZIBA: So, Liz, I'm going to get
11 everyone else in and then see if Tony and Alvin
12 would like to answer that question.
13 Audrey.
14 MS. JACKSON: I don't know if this is
15 the time to make a proposal. I'll just throw the
16 the idea out. I wonder if -- just throwing the
17 idea out that the things that would really matter
18 to me would be the romanette i and ii, so,
19 basically that the states would still be free to
20 define what it is under their own terms, but that
21 there is some federal guidance on what you could

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1 not do.

2 So you could not just say, if you are

3 diagnosed with X, that definitively means you are

4 one thing. Those are the protections that I think

5 are really essential. But the actual positive

6 criteria would be something that states could

7 determine on their own.

8 MS. PODZIBA: So is that, are you --

9 MS. JACKSON: I don't know exactly how

10 it would work. I guess that's a proposal. I'm

11 not sure how that would work. I guess my proposal

12 is, if it would not be a definition but

13 Guidance -- guidance is probably the wrong word.

14 MR. HAGER: You could use criteria.

15 MS. JACKSON: Criteria for what it

16 could not be --.

17 MS. RICKER: Striking one.

18 MS. JACKSON: Striking one and two

19 romanette -- I don't know the --

20 MS. PODZIBA: Let's get some help from

21 Kay on that.

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1 Kay.

2 MR. ROONEY: I think the question would

3 be whether you say in defining kids with the most

4 significant cognitive disabilities, "the state may

5 not base it solely on," or something like that. I

6 think that's your proposal?

7 MS. JACKSON: Yes, that's my proposal.

8 MR. ROONEY: I think you said it more

9 eloquently than I did.

10 MS. PODZIBA: Ok, so that's a proposal.

11 I think there are some people that want to get a

12 first comment in. Let's get their first comments

13 and then we'll come back to your proposal.

14 Lisa?

15 MS. MACK: Again I would be satisfied

16 with criteria and not sure if listing what it is

17 not would be satisfactory. But I did want to

18 reference the non-regulatory Guidance that was in

19 No Child Left Behind. I believe that was the only

20 place where it was sort of defined as the number

21 of students within one or more existing categories

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1 of disability under the IDEA, and gives examples
2 of autism, multiple disabilities, traumatic brain
3 injury, et cetera, and those whose cognitive
4 impairments may prevent them from attaining
5 grade-level achievement standards, even with the
6 very best instruction.
7 Again, there needs to be some kind of
8 framework, and again I'm concerned about
9 portability or even issues with general education
10 where you have military families that are moving
11 from state to state and some children are having
12 to stay behind because they are not eligible to
13 graduate in the state that their families has
14 moved to, how much more so if we have this
15 situation that is defined differently from state
16 to state.
17 Ultimately it has ramifications of the
18 type of diploma they get and that kind of thing.
19 So I would like to see it at least with some kind
20 of criteria.
21 MS. PODZIBA: Ok, so now we have two

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1 proposals on the table.

2 Again, I'm going to take the comments.

3 I've got Ron, Rita, Aaron, Mary Cathryn and Kay.

4 And then we will take up Regina.

5 Lynn I think your card is still up from

6 before, right?

7 MS. GOSS: Yes.

8 MS. PODZIBA: I'm going to take those

9 commentators. Liz, you're slipping in there, and

10 then we will take up the proposals.

11 Ron.

12 MR. HAGER: You know, going back to the

13 criteria -- not the criteria, but the principals

14 that the subcommittee came up with, I want to

15 definitely restate that this is very important to

16 us and we do feel that we need this full range of

17 criteria, which is a compromise from what we had

18 been hoping to see, if you will.

19 But if you look at this language in

20 this proposal, and you look at the operating

21 principals that the subcommittee came up with, I

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1 think this does a good job of balancing that they
2 have the goal is to ensure that students who
3 should take the alternative assessment do take it,
4 and those who should thought take it do not, that
5 there are -- many states are accomplishing this
6 goal, but there are those that do not, which is
7 the idea of having this national consistent
8 standard that is a minimum floor, if you will.
9 Obviously a state that is -- twenty-nine states
10 have the full DLN or NCST criteria. Nothing would
11 prevent them from maintaining that. So Wisconsin,
12 Iowa already are using much more extensive
13 criteria than this.
14 So by having this definition, we never
15 preclude a state from having more protection. So
16 the fact that this floor is here, and you already
17 may to be doing more in your state and continue to
18 do more. For those states that are not, this
19 would be bringing those states up to at least a
20 minimal floor.
21 So that I think really is accomplishing

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1 that, that second bullet point there, trying to
2 accommodate, you know, the constraints on states.
3 And lastly, the IP team point that I
4 think it was Lynn made, this fits within the whole
5 structure of 200.6C where the IEP team is referred
6 to. So this is really giving guidance to the IEP
7 team, and they do that. I mean, if you look at --
8 there's other places where the IEP team has
9 specific guidelines that they must follow, which
10 the bullet point number three, so this would be
11 one more example of some guidance to help the IEP
12 team. Because the goal here is to make sure that
13 we keep within the one-percent statewide criteria,
14 so we have to have some framework within which to
15 work.
16 MS. PODZIBA: Rita?
17 MS. AHRENS: I want to support what
18 Lisa said and proposed, and also note that this is
19 the first time that this term has appeared in the
20 statute, even though it's appeared in regulations,
21 because it's now in ESSA, I do feel it needs to

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1 have that regulation, and that's partly as a
2 safeguard to ensure equity for our students.
3 The parents that I work with typically
4 are refugee immigrant parents of limited English
5 proficiency in a lot of cases, and they have a
6 huge amount of confusion over what this term
7 means. A lot of them do move. And so to have the
8 definition differ from state to state is
9 problematic.
10 Also, I think having the criteria in
11 place, in a broad sense, as Ron said, with
12 safeguards, is very important, because I think
13 that's the federal purpose of these regulations is
14 to provide some safeguards, to ensure that equity
15 is being ensured, and I just want to reiterate
16 again, you know, especially for limited English
17 proficient parents, we have seen a huge amount of
18 misidentification.
19 Even though the two frameworks that
20 most states use prohibits classifying students who
21 are English language learners with disabilities as

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1 being in the most severe cognitive disability
2 category, it is happening. It is happening.
3 There are complaints that have been filed with OCR
4 that are still outstanding on this very issue for
5 this population, and I think having a definition
6 in place would help reduce and diminish the amount
7 of complaints that we have.
8 MS. PODZIBA: Aaron?
9 MR. PAYMENT: So I'm trying to figure
10 out why the opposition and so I'm trying to figure
11 out the lay of the land of this, and it puzzles
12 me.
13 It makes sense to me to define it from
14 a person who has experienced a child who has been
15 denied services. So, it seems to me that it makes
16 more sense to include it.
17 So if it's administered ad hoc, it
18 seems to make sense to have it defined so that it
19 gets past those hurdles at the local level and all
20 the comments at the local level. So it seems to
21 make sense to have it as defined in the law so we

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1 can past it, not have to encourage fighting for it
2 and trying to advocate for certain populations to
3 have appropriate assessment.
4 So, I guess I don't really understand
5 where the opposition is coming from, but I'm
6 wondering if there is some point of convergence or
7 compromise in terms of having states define it
8 under a timeline.
9 So, rather than leave it like states
10 may define it or leave it up to the benevolence of
11 states to define it, instead prescriptive to
12 states define it so we would expect the state
13 authority to define it, but we want to define it
14 because of a certain timeframe.
15 MS. PODZIBA: Mary Cathryn.
16 MS. RICKER: I actually had some
17 questions specifically about the phrase that came
18 up earlier, "extensive direct individualized
19 instruction," and I'm getting hung up certainly on
20 the term "direct instruction" that is imbedded in
21 that, and like what that specifically means to me

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1 as a teacher.

2 And so, I have a few questions about

3 that, but why don't I just start with, what does

4 that mean to you as you put it in here?

5 MS. PODZIBA: Patrick.

6 MR. ROONEY: I'm not sure. Can I get a

7 clarification from a colleague and then try to

8 answer that?

9 MS. RICKER: I'll do a Public Service

10 Announcement while he's doing that, because of

11 this buzzing, it's really hard to hear. Let's

12 speak as directly and loudly into the mic so we

13 can keep capturing everything in the back.

14 MR. ROONEY: So I'll tell you where we

15 got this language from in the absence of totally

16 defining what it means. If you look at the end at

17 Issue Paper 4A, and I mentioned when I introduced

18 this that a lot of this came from the

19 participation guidelines that the two groups of

20 states that have designed new alternate

21 assessments came up with. So there is

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1 supplemental material behind the issue papers that
2 includes the administration guidelines from
3 Dynamic Learning Maps and the National Center of
4 State Collaborative, NCST, and those two groups of
5 states which together encompass about twenty-nine
6 or thirty states, came together to come up with
7 common solution guidelines that they could agree
8 to.
9 You see two sets of solution guidelines
10 on the pages, and both of them talk about, in the
11 little table, that is mostly identical between the
12 two pages, if not identical. I'm trying to look
13 quickly to see if it's its what I think it is,
14 that talks about the three different criteria that
15 would be -- that you would walk through at the
16 usual student level to decide whether the student
17 should take an alternate assessment. And if you
18 answer yes to all three, then the student would
19 qualify for the alternate assessment.
20 If you look at the third one, it's
21 talking about "the student requires extensive

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1 direct individualized instruction and substantial
2 supports".
3 That is the language where that came
4 from. This may be a question where we actually
5 might want to call on Martha Thurlow, our expert,
6 to provide a little support, she might be able to
7 do that. I don't want to put her on notice.
8 MS. RICKER: I can follow up.
9 MS. PODZIBA: Sure.
10 MS. RICKER: So my follow-up, because
11 that came explicitly from that, will that mean
12 that this can be subject to interpretation or is
13 this actually setting a new standard -- a new
14 uniform standard?
15 MR. ROONEY: I'm sorry, Mary Cathryn,
16 could you repeat that?
17 MS. RICKER: Sure. Because this came
18 from that explicitly, does that mean that it will
19 be subject -- it could still be subject to
20 interpretation, or is this a new uniformed
21 standard?

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1 MR. ROONEY: So I would say that we
2 tried to in this proposed definition for the
3 group's consideration not to be overly
4 prescriptive in a definition but to create what I
5 would describe as in broad way, kind of how states
6 would operationalize this. But there actually
7 would be a fair bit of work that states would do
8 when they operationalize this and using them to
9 make decisions, however brief, to their students.
10 I don't read this definition and I
11 don't think we intended it to be very prescriptive
12 at all. I think it was kind of creating a broad
13 framework for that to be done.
14 I don't know that we would do that, to
15 your point, Cathryn, that in my working
16 understanding of what our language would be, how
17 it would be implemented.
18 MS. RICKER: Did you talk at all about
19 what the potential impact on classroom instruction
20 would be in having a phrase like that?
21 MR. ROONEY: Sorry, could you repeat

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1 that?

2 MS. RICKER: As you were drafting this,

3 did you talk at all about or explore what the

4 potential impact on classroom instruction would be

5 in having a phrase like that in it?

6 MR. ROONEY: And this may be a point

7 where I think it would be helpful to have Martha

8 come up. But I think her opinion on what this is

9 might be relevant, if you have time and that makes

10 sense. I'm happy to have her come up.

11 MS. PODZIBA: Could I just ask someone

12 from the Department get me the public comment

13 list. Thanks.

14 MS. THURLOW: Ok. Let me have the

15 phrase in front of me. "Extensive direct

16 individualized instruction," you know, if I had a

17 little more time I probably would have dug back

18 into some of the writing of Diane Broader and

19 others who really have worked with the population

20 over time.

21

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1 But as you work with students with
2 significant cognitive disabilities rarely, but
3 that's not totally -- I'm saying this backwards.
4 Most often it's very much
5 individualized. It's less often some kind of
6 group work. Not to say there isn't group work,
7 but it's very much individualized to the students'
8 you disability characteristics, the extent of
9 their intellectual functioning, the extent of
10 their motor involvement.
11 So, it's not to say it's not
12 individualized for other students, but all those
13 three together very much present a picture of the
14 instruction that is very much often one to one or
15 two instructors, you know a teacher and a
16 paraprofessional working with an individual
17 student.
18 I don't know if that helps. But it's a
19 beginning, and I believe I certainly could find
20 some more specific language in some of the
21 researchers who work on the instruction.

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1 MS. PODZIBA: Thank you.
2 Regina.
3 MS. GOINGS: Just to add to that,
4 speech language pathologists provide direct and
5 indirect services; direct meaning it could be two
6 or three students together or in a classroom where
7 they're targeting the goal of one student.
8 So the services that they provide,
9 although all of them benefit, they are actually
10 providing direct services. They're only
11 identifying one student in the services.
12 So hopefully that would help clarify
13 that.
14 MS. RICKER: It does. And this gets to
15 us, as Aaron talks about trying to distill what
16 objections that lead to this.
17 My concern is that, understanding that
18 it is meant to exclude as many students as
19 possible, and that's halting the success.
20 So I really appreciate the various
21 clarifications.

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1 MS. GOINGS: May I make another
2 comment?
3 MS. PODZIBA: Yes, you were up.
4 MS. GOINGS: I just wanted to clarify
5 too teams. There are two teams when you are
6 dealing with IEPs. First is the eligibility team.
7 Those are the ones who identify the disability.
8 And that can consist of, not always limited to,
9 the IEP team.
10 The IEP team is the team that actually
11 developed the program or the plan for the
12 accommodations.
13 So I just didn't want everyone to
14 confuse the two. Eligibility team defines and
15 identifies a disability and the IEP team develops
16 the program.
17 MS. PODZIBA: Thank you.
18 Liz.
19 MS. KING: Yeah, I wanted to sort of
20 say that to Audrey's proposal, I am not
21 comfortable with only having a list of the

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1 exclusions, although I understand why. I think
2 we've heard in this conversation some comments
3 that sort of suggested an speculation that low
4 income children or refugee children, children of
5 color, immigrant children facing other challenges
6 will be more likely to be classified as children
7 with the most significant cognitive disabilities,
8 which did give me pause and made me nervous,
9 because those are not those criteria.
10 So I understand the desire for having
11 that kind of list. I think we need to an
12 affirmative list of what the characteristics of
13 these children should be in order for this to be
14 the most useful and the most helpful.
15 I think to the instructional point that
16 Mary Cathryn was making, there is also a
17 requirement in the statute that those children
18 included in the alternate assessment be included
19 the in the general classroom and make every effort
20 and consistent with IDEA, and good instructional
21 practice and all of that, making sure that

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1 children are included as much as possible. I
2 think that specifically thinking about the
3 individualized instruction component of this, and
4 these criteria are very much about identifying
5 individual children and being as clear as possible
6 for those professionals, for those educators
7 closest to the child making the decision about
8 whether this child with a significant disability
9 or a with a cognitive disability is really
10 appropriate for the alternate assessment.
11 It is very much about being very clear
12 that we are only talking about those children for
13 whom -- for who have a very significant, most
14 significant cognitive disability.
15 So I would not want the goal of this to
16 be to exclude as many children as possible. I
17 would want to exclude every single noneligible
18 child and not one child more. And I think this is
19 sort of the value of having both the statutory
20 one-percent cap as well as the regulatory
21 definition is that the one-percent cap works at

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1 the state level, and obviously has implications at
2 the LEA and school level.
3 But this definition is at the child
4 level, and this is among those children in your
5 building who have IEP's, which of them should be
6 taking the alternate assessment, which of them
7 have the most significant cognitive disabilities.
8 So I think both of them are incredibly
9 important for making sure the appropriate children
10 are taking the appropriate assessment, but they
11 serve different purposes, and I think that's why
12 we need both of them. And I think that
13 one-percent cap being included in the law points
14 to having this definition in the regulation.
15 MS. PODZIBA: Tony or Alvin, I want to
16 give you an opportunity answer. Is there
17 something in particular about this language, or is
18 there -- or is it more general than that?
19 I'm particularly curious about how this
20 might have the opposite of the desired affect that
21 we were responding to Tony.

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1 Alvin?

2 MR. WILBANKS: For me it is general.

3 Special education is one of the most regulated

4 programs we have. But I also think it's a program

5 that has some of our best trained and most

6 effective teachers, and I believe they do a great

7 job doing -- I won't repeat what Regina said. It

8 was very much on board. But you have those

9 teachers who know them best, who know those and

10 can account for those individualized disabilities

11 that they have. I believe those are best to make

12 that determination, and I think to try to define

13 it could have either one -- we could have less

14 being put in or it could have more.

15 I'm not really concerned. I think Tony

16 asked at the state level, they have the

17 one-percent cap, and while the statute says you

18 can't put a cap on the district, I'm certainly

19 concerned with that. How can the state make a cap

20 if we're not concerned about it.

21 But what I'll really concerned about is

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1 if the child needs this, that they get. And I
2 believe the best people to do that and special ed
3 people that use as a team approach general staff,
4 special ed staff, parent, and I think they're the
5 ones best -- in the best position to make this
6 determination.
7 So that's just one object. I mean,
8 anything -- and I understand we're trying to make
9 this a statute of this law much more easier as we
10 implement it, but I just don't see this being --
11 that here and I think just adds another regulation
12 to already a highly meticulous and procedural
13 program for our students.
14 MS. PODZIBA: Thank you.
15 Tony?
16 MR. EVERS: My concerns are both
17 general and specific.
18 Specific ones I will tell you come from
19 staff back in Madison who are with us today to
20 testify.
21 For the general ones I will repeat once

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1 again, federal government hasn't been able to
2 define this in a couple of years. The committee,
3 yes, they came up with some global statements, and
4 so I just think we're not in a position to adopt a
5 definition. And my staff said they felt that the
6 definition as proposed would increase the number,
7 which I support they're recommendation.
8 I will say that the guardrails and in
9 romanette, I learned a new word, I thought that
10 was a concept. Anyway, they thought those were
11 inappropriate.
12 MS. PODZIBA: Ok, so we have five
13 minutes, and we have two proposals and my hunch is
14 that that's where we'll start with when we come
15 back to this issue. However, there are a couple
16 of things to attend to.
17 And no one signed up for public
18 comment. Is there anyone in the audience who
19 would like to address the committee at this time?.
20 Ok, I also know that Derrick would like
21 to propose a subcommittee. So I'm going to give

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1 Derrick a couple of minutes to explain that and
2 then have the committee decide whether or not it
3 wants to authorize that subcommittee.
4 MR. CHAU: In response to our
5 discussion yesterday regarding dual emersion
6 programs, it's come to my attention and the
7 attention of quite a few other committee members,
8 that we have a growing number of dual emersion
9 schools that are required under the federal
10 requirements to administer assessments in English
11 primarily, even though these are students whose
12 primary language of instruction is not English.
13 And so, what I'd like to propose is a
14 subcommittee that would also include Kenji as an
15 expert advisor to investigate and develop a
16 proposal for how to a address assessments for dual
17 emersion for dual emersion schools and to
18 determine where that might fit into the
19 regulations.
20 MS. PODZIBA: Ok. Any questions about
21 that subcommittee. We can also come back to it

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1 Tom?

2 Are there any questions for Derrick

3 before you have those conversations?

4 Liz?

5 MS. KING: Can I just flag as a member

6 of a former subcommittee, it's important to

7 remember what you are fully entitled to talk to

8 whoever you want whenever you want, so I will say

9 that my experience of the subcommittee, I found it

10 a little bit limiting because of the process, just

11 as a piece of advice from one, and since I expect

12 to join your subcommittee if you form it, and

13 that's all.

14 MR. CHAU: Thank you.

15 MS. PODZIBA: Mary Cathryn.

16 MS. RICKER: Would this also include

17 the discussion of one-way emersion schools?

18 MR. CHAU: I think we would be open to

19 that. We would be looking at other connections

20 with other regulations out there to define schools

21 that would fall under this and to develop the

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1 regulatory language to allow for exceptions to the
2 assessments.
3 MS. PODZIBA: Kay?
4 MS. RIGLING: I don't want to do
5 anything to chill the discussion. I just want to
6 put in a reservation that there may be a legal
7 objection to whether we can actually do this
8 through regulation.
9 So I just want to put that out there to
10 that we're up front with that.
11 MS. PODZIBA: Alvin?
12 MR. ROONEY: The point in the statute,
13 there is no point in the statute that I can point
14 to that says this fits in with something in the
15 statute, that you clearly would be waiving
16 something in the statute in order to permit it.
17 I think that's where the challenge
18 comes.
19 MS. RIGLING: Right, exactly. I think
20 that's well said.
21 MS. PODZIBA: Alvin.

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1 MR. WILBANKS: I just want to make one
2 other report on the definition, and my colleague
3 reminded me of this.
4 IDEA requires that you make
5 individualized decisions. I understand that if
6 you have a definition you still go through a
7 process. But if you have a definition and
8 somebody sort of misinterprets that definition and
9 parents go into thinking they're going to get
10 this... I don't know how many of you are from the
11 practitioner level. We see the challenges all the
12 time. And I think this would just increase that.
13 I'm not saying that we should make a
14 decision for a separate clause or limitations, but
15 on the other hand, when you don't know want to tie
16 up the process of educating kids to the highest
17 level possible and giving them the best that we
18 can with our instruction program, on whatever
19 level we can.
20 So that's again a reason why I just
21 think a definition in all fairness to everybody's

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1 opinion, is not something that should be --
2 MS. PODZIBA: Ok, we'll surely come
3 back to that question.
4 Ron, did you have one more comment on
5 the subcommittee?
6 MR. HAGER: Yeah, I was just going to
7 reaffirm Kay's point. I think it's well beyond
8 the statute, you can't do in a regulation what
9 you're unable to do it's not allowed in the
10 statute. That's our concern.
11 MS. PODZIBA: Patrick, do you want
12 to -- I think everybody's probably ready to go.
13 Do you want to just tell us what to expect
14 tomorrow morning?
15 MR. ROONEY: Yes. So we are pretty
16 much through all the assessment pieces. I will
17 recognize that we didn't get through some or all
18 of the issue papers, but I know you're all excited
19 and ready for the supplement not supplant
20 conversations, so we will start with that tomorrow
21 morning when everybody's fresh and ready to talk

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1 about that.

2 So that will be first on the list and

3 then after that we will try to come back and look

4 at the full package and there's a few things we

5 didn't talk about in the issue papers that we want

6 to flag for you, and we could try to come back

7 with some of the issue papers that have some

8 suggestions or responses as to the questions that

9 are outstanding. I can't promise right now which

10 ones those will be, so we can do that teaser and

11 hopefully we will have enough time.

12 MS. PODZIBA: Thank you, everyone for a

13 real good hard day's work. I appreciate the focus

14 and effort. See you tomorrow morning at 9:00.

15 (Whereupon at 5:00 p.m. the Negotiated

16 Rulemaking Committee meeting was adjourned until

17 Friday, April 8, 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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