Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 08, 2015

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 8, 2016 9:03 a.m.

Court Reporter:

Kim M. Brantley, C.S.R.

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1 NEGOTIATED RULEMAKING COMMITTEE:

2 SUSAN PODZIBA, Facilitator

3 PATRICK ROONEY, Moderator

4 ARY AMERIKANER, Moderator

5 KAY RIGLING

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, KAREN HAWLEY MILES and RUTH RYDER

12 and

13 JUDY BECKER, Technical Assistant

14 Office of the General Counsel

15

16 PUBLIC COMMENTATORS: KANDISE LUCAS

17 MARTY JEWELL, NAACP

18 TICHI PINKNEY EPPES

19 LAQUETTA MASSEY

20

21

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1 MS. PODZIBA: It looks like everyone's
2 here. So if everyone would take their seats, we
3 can get started.
4 All right, good morning. Welcome back
5 to day three of the great slog. A lucky thing for
6 all of us is it's also Friday, so at the end of
7 the day we get to actually go home to our families
8 and play for a few days.
9 I wanted to let everybody know that
10 Delia has a family emergency, so she won't be here
11 today, and Liz is her designated alternate. So
12 when I'm asking for a consent and dissent, Liz is
13 authorized to dissent as the alternate for Delia,
14 who is not here. And that's consistent with our
15 protocols.
16 That said, I'm going to turn it to
17 Patrick and Ary. We're going to start with
18 Supplement Not Supplant. From there we'll go to
19 Issue 6 on assessment, which is just a few things
20 left that we haven't looked at in the package, and
21 then we'll find out if the Department's been able

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1 to review and revise any of the issue papers that
2 we got through yesterday. But we'll know more
3 about that later.
4 So for now we're going to focus on
5 Supplement Not Supplant.
6 Ary.
7 MR. AMERIKANER: Hi, there everybody.
8 It's good to see you again. I know I've been the
9 only lucky one of us to not be at this table the
10 whole last three days, so as a reminder, my name
11 is Ary and I'm in our Office of Elementary and
12 Secondary Education, and I just wanted to take a
13 second to say thank you again from all of us at
14 the Department.
15 I know we are the ones here who this is
16 our full-time day job, and you all have other
17 full-time day jobs that you are not attending to
18 fully right now, and we appreciate your thought
19 and effort and willingness to be here and work
20 with us.
21 And I personally really appreciated the

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1 conversation we had about this topic two weeks
2 ago. I hope that you will see it was really
3 helpful for me and for the rest of the team
4 working on this topic here at the Department and I
5 hope that you will see your thoughts from that
6 conversation reflected in the draft text that is
7 in our issue paper for today.
8 Just to bring us back out of
9 assessments and into Supplement Not Supplant world
10 this morning, I wanted to briefly just reiterate
11 that the purpose of Title I, as we all know at
12 this point of the ESSA, is to provide all children
13 with significant opportunity to receive fair,
14 equitable and high-quality education and to close
15 educational achievement gaps.
16 As you all are well aware I know at
17 this point, the law contains a provision that is
18 designed to insure that these Title I funds have a
19 chance of actually achieving that goal and
20 achieving that purpose and to insure that these
21 Title I funds are used to supplement state and

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1 local funds and not to supplant state and local
2 funds.
3 So the supplement not supplant
4 requirement is not new in the ESSA, but the ESSA
5 did change the Supplement Not Supplant
6 requirement. So the text that we are here to talk
7 about today is designed to help districts, to help
8 clarify for districts how they meet that statutory
9 requirement.
10 So I think this is very short compared
11 to what you guys have been working on in
12 Assessment. So I thought I would just do a very
13 quick walkthrough of the whole two pages right
14 now, paragraph by paragraph, and then open it up
15 for questions and input.
16 So, if you turn to Page 4 of the issue
17 paper, the paragraph (A) is the In General
18 paragraph which -- I'll give everybody a second to
19 get there. Paragraph (A) is the In General and
20 simply restates section 1118(b)(1) and (3) of the
21 law.

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1 Paragraph (B), Compliance, is where we
2 propose language to implement the statutory
3 compliance requirements that insures that Title I
4 funds are used to provide truly supplemental
5 support in high-poverty schools.
6 Within paragraph (3) you'll see that
7 there's (B)(1), School Costs or Services, and then
8 (B)(2) which starts on the top of Page 5, which is
9 Districtwide Costs or Services. We'll walk
10 through each of those, but I just wanted to point
11 out that distinction before we started on the
12 schoolwide, or on the school section.
13 So School Costs Or Services, paragraph
14 (B)(2) focuses on schools and services, and then
15 (B)(1) little (i) or romanette (i) states that
16 each district must annually demonstrate compliance
17 and leaves the time and manner of such check to
18 the states to determine.
19 Then (B)(1) little (ii), or romanette
20 (ii), states that "Each district may determine the
21 methodology it will use to allocate state and

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1 local funds to its schools, provided that the
2 methodology results in two things," A and B on the
3 bottom of Page 4. A is that "it results in the
4 district spending an amount of state and local
5 funds for people in each Title I school that is
6 equal to or greater than the average amount spent
7 for people in non-Title I schools," and we took
8 the suggestion that we heard at the table a couple
9 weeks ago to use the -- not reinvent the wheel
10 there and use the reporting requirement that's all
11 ready written into the law for that purpose.
12 And then paragraph (B), the other
13 requirement, is that the methodology allocates an
14 amount of state and local funds that is sufficient
15 to enable each Title I school to provide its
16 basic -- its basic educational program. So A is
17 just that, the basic, and little (i) I guess is
18 the basic educational program as defined under
19 state or local law, and this is to insure that a
20 school can literally keep its doors open and
21 continue to function without Title I funds, so

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1 that Title I funds are actually supplemental on
2 top of a basic program of school.
3 And then (ii) is saying that if "each
4 Title I school needs to have enough state and
5 local funds to provide services required by law
6 for students with disabilities and for English
7 learners". And there I should say that IDEA
8 funding can be included in that calculation for
9 the students with disabilities.
10 And then moving on to Page 5, there's a
11 paragraph that is much more limited on
12 districtwide costs or services, so this simply
13 says that to comply with the requirement, the
14 statutory requirement in allocating state and
15 local funds for districtwide costs or services,
16 which we know might be things like transportation
17 or, you know, other types of districtwide
18 services, "An LEA must insure that each Title I
19 school receives a share of those costs or services
20 that are equal to or greater than the share it
21 would otherwise receive if it were not a Title I

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1 school".

2 And then we go into Exceptions in

3 paragraph (iii) and this again I think you'll see

4 is reflective of the conversation that we had a

5 couple of weeks ago.

6 So the first exception is that "A

7 district may demonstrate compliance with the

8 requirement around insuring that each Title I

9 school has as much as the average non-Title I

10 school in the district and expenditures, either

11 districtwide or on a grade-span basis".

12 So this is reflecting the fact that

13 often times it's more expensive to run a high

14 school, say, than an elementary school. So it

15 gives districts the flexibility to choose which

16 way they want to do that.

17 Exception two is that "A district with

18 only a single-school or a single-school for grade

19 span does not have to meet the compliance

20 requirements that was related to comparing

21 schools". So we think that clearly wouldn't make

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1 much sense and also is in response to some of the
2 issues that I believe were raised last time.
3 And then for paragraph (iii), romanette
4 little -- romanette (iii), we spell out a couple
5 of additional flexibilities. One is that a
6 district may choose to exclude a school that
7 enrolls fewer than one hundred students in their
8 calculations and comparisons of expenditures. We
9 know that any time you do something on a
10 per-people basis, if you have a very, very, very
11 small number of students, it sort of makes the
12 calculations hard and makes, by definition, the
13 per-people expenditure go up.
14 It also allows a district to exclude
15 supplemental state or local funds expended in any
16 school for programs that meet the intent and
17 purposes of Title I districts, which we think will
18 respond to some of the concerns that we heard last
19 time, I forget now who it was, but this worry
20 about having schools who are high poverty but
21 maybe not the highest poverty, or getting Title I

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1 districts to try to allow some flexibility there.
2 And then we put in the transition
3 timeline. This says that a district has two
4 options. One is to demonstrate to the state no
5 later than December 10th, 2017, that its current
6 methodology meets the requirements, and that's the
7 statutory dates. And then it also gives an option
8 instead for a district to submit a plan to their
9 state by that date to say how they will meet the
10 requirement by the 1920 school year.
11 We're open to respond to some of what
12 we heard about meeting three-year budget cycles
13 and needing time to plan ahead.
14 Then the last little bit is just prior
15 to the use of this new requirement, the district
16 can choose to use either the methodology it plans
17 to use under this new law or the methodology it
18 was using under the old law to meet the Supplement
19 Not Supplant requirement.
20 So that's the whole overview and I
21 would love to answer clarifying questions or just

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1 hear suggestions and comments.

2 MS. PODZIBA: Tony.

3 MR. EVERS: Thank you.

4 I have several foundational tech

5 questions, but I'll just hold it to one and see

6 what other people have questions about.

7 First of all, as I saw his law or this

8 process become law in non-rules, I was really

9 excited about the possibility of equity being

10 enhanced, and I'm concerned that it may work just

11 the opposite, but that's just an overall question.

12 First I want to go back to the basic

13 educational program and sufficiency around that.

14 How will that be determined in Wisconsin where

15 there's no statutory language around that? How

16 will sufficiency -- I mean, will auditors come in

17 and determine a basic education program? Is it

18 going to be done by schools?

19 I'm from the old days when Title I kids

20 were sent down the hall, and I'm fearful that this

21 will help us revisit those old days, which we

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1 don't want.

2 So one of the basic starting blocks

3 here is the basic education program, other to

4 determine who determines the sufficiency, and how

5 will that all be operationalized as this is an

6 important operational issue. This is in a high

7 level.

8 MR. AMERIKANER: Thanks, Tony. That is

9 a good question --

10 MS. PODZIBA: Excuse me, Kerri, did you

11 say you have something?

12 MS. BRIGGS: I just have a basic

13 question.

14 All of this is regulatory text? This

15 is just in different treatment? Like the font's

16 different? It's all black.

17 MS. PODZIBA: Yes.

18 MS. BRIGGS: I miss the colors.

19 MR. AMERIKANER: I apologize.

20 MR. AMERIKANER: It is all regulatory,

21 guys, and that is purely just a feature of that

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1 it's been the big bureaucracy and different teams
2 working on preparing different documents. So
3 please take nothing from the fonts being different
4 or the colors being different. It is all the same
5 on Page 4 and 5. This is proposed draft
6 regulatory language, and as I said at the
7 beginning, the In General paragraph at the top,
8 paragraph (A), is all just restating statutory
9 language, if that helps. And then the remainder
10 is helping to clarify statutory language.
11 And Patrick points out, hopefully, and
12 Richard was also helping out too, that there is no
13 existing Supplement Not Supplant regulation. This
14 is just much simpler to think through than the
15 Assessment piece.
16 MS. PODZIBA: Now we're all on the same
17 page. So to Tony's question.
18 MR. AMERIKANER: To Tony's question.
19 So I think where there is state and local law, it
20 would be state and local law. Where there is not
21 state and legal law, or where there is not state

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1 law at least, which is I think what you said, it
2 would be whether if there is any local law
3 provided, then local law I think controls or, if
4 there are not laws, then policies.
5 I don't know where exactly you're going
6 with it, but we could consider changing it to not
7 say "laws," but "policies and rules," or "laws,
8 rules and policies" or something like that, if
9 that would help.
10 MR. EVERS: Well, it could be. I just
11 don't know how to deal with that. This music,
12 art, and phy ed, is that basic? Is guidance
13 basic? Help me out. I've got to run this gig.
14 So tell me how that's going to work.
15 And if I can't define it, how, you know, like I
16 said, is the auditor going to come and say, well,
17 this is what is going to be here on Franklin, and
18 you're not sufficiently -- you're not meeting the
19 sufficiency test.
20 MR. AMERIKANER: So is it helpful to
21 give -- there are two examples I can think of

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1 where this has come up in the past. This has
2 actually been in our Guidance documents in the
3 past, so that's where this language comes from.
4 The two examples that I can come up with, and Kay
5 really might be able to speak to this more, is the
6 one example where a school district literally did
7 not have enough money to operate the school buses,
8 like the transportation in its district, and so
9 without Title I funds it would not have been able
10 to actually continue to get kids to school. And
11 so it felt pretty clear that Title I funds were
12 not supplementing a basic educational program
13 there when you literally can't get your kids to
14 school.
15 And the other example that I know of
16 off the top of my head is where a school district
17 did not have enough funds to actually provide a
18 second grade teacher in all of its elementary
19 schools, and so they just literally couldn't
20 provide the basics.
21 So those are the two examples that I

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1 know of that we're trying to get at here is that
2 Title I funds shouldn't be used to literally keep
3 your doors open and provide the basic educational
4 program.
5 MR. EVERS: So, in those two cases, who
6 determined that, the sufficiency?
7 MR. AMERIKANER: I think in those
8 cases --
9 MS. RIGLING: Yeah, we most certainly
10 did not determine sufficiency. We turned it back
11 to the state or district and said, you know, What
12 is it that you have to provide -- as Ary said --
13 in order to keep your doors open and you don't use
14 Title I funds for that basic provision of
15 services?
16 We're not telling you what those are,
17 but Title I funds can't be used to provide what a
18 district is otherwise required to provide for
19 basically free appropriate public education --
20 free public education. I don't want to say
21 "appropriate".

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1 MR. EVERS: Sorry --

2 MS. PODZIBA: That's ok. I think Alvin

3 may have another question related to your

4 question.

5 Alvin, is your point related to this

6 question of basic educational programs?

7 MR. WILBANKS: In a way it is, and it's

8 sort of a general question.

9 You know, ESSA basically carries

10 forward the NCLE 2015 strategy for compliance for

11 Supplement Not Supplant.

12 MR. AMERIKANER: This piece was in that

13 2015 guidelines.

14 MR. WILBANKS: I get that and I also

15 get that Title I is to supplant.

16 MR. AMERIKANER: To supplement. We

17 know what you meant.

18 MR. WILBANKS: Yeah, supplement. So,

19 why, since 2015, why such a change, in particular

20 how you go about making the decision of Supplement

21 Not Supplant as it relates to average cost and

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1 individual cost in salaries?

2 I'm concerned, and I'm sure a few other

3 people are here too, how this gets played out in

4 the district. More importantly, it is very

5 disruptive that you -- you know, references you

6 may have to or at least some of the methodology

7 which say you have to change veteran teachers in

8 one school, in order to reach this, or spend a lot

9 more money.

10 I think that is inherently disruptive.

11 I'm not sure that's not a tremendous overreach in

12 the operation of schools.

13 And again, I get the Supplement Not

14 Supplant. I get that. I have no problem with it.

15 And I believe as a district that's tried for many,

16 many years to close the achievement gap as has

17 been recognized by publications, based solely on

18 that. I think we get that.

19 My biggest concern is how it's going to

20 impact the day-to-day operations, certainly the

21 yearly operations of the industry, in order to

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1 meet what I'm considering an artificial
2 recommendation or an artificial criteria to
3 average in a cost spent on first year or whatever.
4 There are a lot of things that go into
5 that. Just transferring a teacher, traffic
6 patterns are horrendous. We have traffic -- I'm
7 not sure to arrive in LA every day, but we're
8 second in terms of traffic. All of those things
9 are disruptive to people. They don't have
10 anything to we're trying to get at here in
11 providing an equitable, fair, the highest possible
12 education available for all students.
13 So that's a big challenge that I think
14 we need to sort of address.
15 MS. PODZIBA: Ary?
16 MR. AMERIKANER: I definitely want to
17 hear from everybody else. I just wanted quickly
18 to say on that we, Alvin, on that last point,
19 certainly I agree with the idea of forced teacher
20 transfers is a terrible idea and terrible policy.
21 So I just wanted to put that out there.

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1 MS. PODZIBA: So are these cards up for
2 the same point that Tony raised?
3 Ok, Lynn?
4 MS. GOSS: In our school district, we
5 hover around that forty-percent mark anyways, and
6 so now this year we have actually fallen below
7 that forty percent. So we will be on waivers for
8 next year.
9 So what happens in year two, year
10 three, you know?
11 It just seems like it's really hard to
12 figure out what will happen and what will have to
13 actually be cut, after having Title I funds, it
14 becomes -- it's not like there's one teacher and
15 one parent that does all of the Title, because in
16 a schoolwide Title, every teacher is a Title,
17 every Paraeducator is a Title staff. And so, it
18 gets imbedded when you put in that you're also
19 working with response to intervention, the
20 interventions that are happening.
21 And so, we've created a system in our

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1 school where we do have the Title I services that
2 somewhat could be looked at as separate, and you
3 could take that layer off, but there's just so
4 much that we have embedded as far as, you know,
5 supplementing the classrooms with additional
6 books, additional things like that.
7 So, how do you figure out what we can
8 take away and keep it basic?
9 MR. AMERIKANER: Can I just ask a
10 clarifying question, so I understand your
11 question?
12 Are you worrying about your individual
13 school falling under forty-percent poverty and
14 therefore, going from a schoolwide Title I program
15 to a Target Assistance program, or are you worried
16 about losing all of your Title I funds or what?
17 I'm just trying to understand a little
18 bit more the question that you're asking.
19 MS. GOSS: It just changes the dynamic
20 of it. And then what happens, you know, how do we
21 define what that basic is in our school district?

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1 We've already made cuts. We've lost our tech ed
2 teacher. Our phy ed has gone down to one or two
3 days a week, our music program is cut, art's cut.
4 We have all of these cuts because of the funding
5 system that we have, and so then what is then --
6 to Tony's point, what's basic?
7 You're talking about all those things,
8 you know, phy ed should be more a part of the
9 basic than it is. The health, our health classes
10 are completely taken out.
11 And so, if you can't define what's
12 basic, then how do you know if you're
13 supplementing or supplanting?
14 MR. AMERIKANER: Yeah, I think we -- I
15 certainly feel your pain and I hear about the cuts
16 that you are facing, and I think one of our
17 concerns is that we don't think that at a federal
18 level we should be defining what is the basic
19 educational program. And so I hope that you can
20 work with your district and your state to figure
21 out how to define that.

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1 But I think our concern is that Title I
2 funds, that at least -- at a bare minimum that
3 Title I schools have enough money to keep their
4 doors open and are not getting shortchanged
5 relative to other schools in their district.
6 Right, so that at a bare minimum the
7 highest poverty schools should be getting as much
8 as the schools that are less stricken by high
9 concentrations of poverty.
10 While I a hundred percent feel your
11 pain, our concern is that we're trying to take a
12 step forward here. You know what I mean? So
13 we're trying to say, at least have enough to keep
14 the basics.
15 So if your district had a policy that
16 every school had to provide art, then presumably
17 that would be part of the basic educational
18 program, but it would be up to your state and
19 district.
20 MS. GOSS: Because the percentage of
21 kids that need the services don't change. Because

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1 in our school you're talking maybe ten kids, you
2 know, depending on -- coming in and out, but those
3 ten kids coming in and out of the system would
4 determine whether we get any of the funds.
5 MS. PODZIBA: Thomas?
6 MR. AHART: I'd like to echo what Alvin
7 shared. We have a pretty high poverty level
8 districtwide, and where we've had the most success
9 a lot of that has involved -- in some schools in
10 particular, that has involved replacing a lot of
11 staff. And I can tell you that the average age of
12 the staff in the schools has not gone up when we
13 have done significant replacement to improve the
14 quality of instruction.
15 So we don't have good measures or
16 systems in the country, or even by state, to
17 measure teacher quality. And I would say that
18 seniority, which really drives the cost, is not a
19 good proxy for that.
20 And so the disruption that we would
21 have to undertake to be in compliance would force

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1 us to not serve students as effectively as we
2 currently are.
3 MS. PODZIBA: Richard?
4 MR. POHLMAN: Sure. I have some
5 questions about one of the -- I think it
6 piggybacks on something Tony said.
7 When I read this I thought about two
8 different ways in which I've interacted with
9 Supplement Not Supplant in my roles as a school
10 leader. The first is when we're doing our
11 applications with the state agency, and the second
12 is when we're audited under our circuit audit, the
13 wonderful A133 audits. And I love auditors, let
14 me preface it by saying that. I love them, really
15 do. They're doing great work.
16 That said, when there is a void, when
17 there is something that is undefined, it takes us
18 a lot of time in working with auditors to mature
19 that definition and to come to a place where, you
20 know, they are reading the law, and they are
21 reading your regs, that they want us to show them.

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1 How did you define your basic -- that's going to
2 be the question, right? Show me how you define
3 your basic education program. Well, we don't have
4 a local law.
5 Ok, absent the local law, my fear is
6 that they may use things like the prior year's
7 allocations, the prior year's salary allocations.
8 They may start using things that would
9 historically define the program historically
10 offered.
11 My concern with that is that it becomes
12 a cap or a limitation on innovative practices. I
13 think that anything that begins to have that
14 chilling affect is actually -- I think this is
15 what Thomas said, and some are saying this, it's
16 contradictory to some of the tenants of really
17 advancing how we're serving our most needy
18 students.
19 Again, I speak from this perspective.
20 Like my schools are super-high poverty, ninety
21 percent in one of them. I think that we are

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1 concerned that wherein there might be conflation
2 to it at a state level, saying, Oh, if you're
3 using Title I funds to, for instance, cover a
4 salary of an FTE of a teacher, that couldn't be
5 done... Look, when you're ninety-percent poverty,
6 it can be done.
7 And I think this gets to a space where
8 you've created in turn where auditors and state
9 officials may conflate, and I'm concerned about
10 the unintended consequences here.
11 So I want to offer those out. I don't
12 have a lot of solutions to it. So like my
13 solution would be can we strike it or can we
14 better explain it? Can we add a "such as"? Can
15 we do some things that would somehow -- I don't
16 want to use the term "soften," but it's the word
17 that comes to mind, because of these
18 considerations.
19 And I think too that this question of
20 when it's not defined in state and local law...
21 Love our legislators, love them, just like

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1 auditors. They are all wonderful people who often
2 times though don't understand the practical
3 implications of a definition they made, and it
4 takes years for those definitions to mature under
5 local law, and one sort of slide of the pen can
6 create audit findings for every LEA in the state
7 or can have really detrimental impacts.
8 Also I think you find that locally many
9 times a legislature can't come to consensus about
10 what this might mean. So I think you're kind of
11 going down a path where it's fraught with a number
12 of things that were brought up for me that I just
13 like put on the table. I know that there's a ton
14 of stuff.
15 MS. PODZIBA: Tony.
16 MR. EVERS: I guess I said enough about
17 the basic program. I just absolutely cannot
18 figure out how that's going to work. Let me go
19 someplace else.
20 Equity is a huge issue in the state of
21 Wisconsin, and we have a long way to go. One of

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1 the ways that we're attempting to go, and I hope
2 to get the legislature to buy in on this is,
3 change our school funding formula -- which is
4 inherently bad and it's broken -- to include,
5 similar to California where foster kids are
6 counted, ELL kids are counted; essentially
7 weighting a whole number of kids that frankly
8 aren't giving a good shape of our state.
9 If we do that, I believe -- I don't
10 know how that's going to work, first of all.
11 Because what we -- any non-Title I school that has
12 any of these kids, whether they get more money, I
13 just -- how is that going to work? Operationally,
14 how is that going to work?
15 MR. AMERIKANER: Susan, I'm happy to
16 answer this.
17 MS. PODZIBA: No, I think that you may
18 have moved -- are we still on basic educational
19 programs or are you bringing up --
20 MR. EVERS: Which kids. I'll wait.
21 MS. PODZIBA: Ary and Marcus, are you

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1 on basic educational program? Liz is waiting for
2 new issues.
3 MR. CHEEKS: That's where I am also.
4 MS. PODZIBA: Ok, Aaron?
5 MR. PAYMENT: My statements are
6 fundamental to basic education and Supplement Not
7 Supplant.
8 So two examples really quickly is in my
9 community the local city used U.S. state
10 funding -- used us to qualify a community, because
11 we didn't have indoor plumbing, in the city limits
12 in the early '70's to qualify for sanitation
13 dollars. And then they used the funds to do a
14 beautiful park downtown and left us without
15 sanitation funds.
16 And so they supplanted their obligation
17 and they actually used funding specifically for an
18 equity purpose.
19 And then also a university that I
20 worked at used Title III dollars to buy
21 qualified -- using our disadvantaged population to

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1 qualify, and then used the dollars to buy
2 computers and not service our needs. And the
3 argument was, well the computers have a possible
4 benefit for the disadvantaged population.
5 So as far as the concern about keeping
6 your records straight, we have eight different
7 funding cycles, because we have to go and apply
8 for grants. We get some trust fund grants from
9 the federal government, and we have to keep
10 separate budgets, separate checkpoints and
11 separate audits for all of that. And it's
12 cumbersome, but it's what you have to do.
13 So, you know, I'm concerned about --
14 and the reason why these regulations exist is out
15 of experience. It happened for a reason. And
16 they became Guidance and now they're finally
17 Regulation because it wasn't clear what the state
18 could or could not do.
19 So you don't recognize for the state's
20 rights people, the default is that it is in the
21 law, and so it will be left to interpretation,

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1 probably left to litigation. So it seems like
2 there should be a desire to want to quantify it to
3 some extent without overreaching.
4 And then the other thing is that I'm a
5 little confused to hear the arguments that the
6 state legislators don't have the competency, and I
7 happen to agree with that, but you can't argue for
8 state rights and then argue that the states aren't
9 going to get you the regulations to clarify for
10 you. You can't argue out of both sides of your
11 mouth on that argument. You have to respect
12 state's rights and then put the pressure on them.
13 And we know as educators that the
14 legislators don't know anything about education
15 and they are entrusted to make the rules. But you
16 can't argue for state's rights and then say that
17 the state doesn't have the competency to create
18 the regulation.
19 Finally, you know, I'm just concerned
20 about balancing budgets on the backs of the most
21 disadvantaged populations and then not having the

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1 equity measures to meet their needs.

2 So I'm not saying that that's overt any

3 more, but I think it's to our benefit to clarify

4 it in Regulation so that it's very clear, and then

5 it's incumbent on you to get with your legislators

6 to get them to write regulations that are clear so

7 that you're not overburdened with regulations.

8 Remember, the default is, it is in the

9 law and you have to do it. So you shouldn't want

10 to then clarify what that means.

11 MR. EVERS: This has nothing to do with

12 putting things in buckets.

13 MS. PODZIBA: Hang on, Tony --

14 MR. EVERS: It has to do with the kids.

15 Doing it this way is going to impact poor kids in

16 a negative fashion. That's my issue. It's not

17 about whether we have enough auditors to put

18 things in buckets.

19 MS. PODZIBA: Excuse me, so the

20 question is how do we get it to work so it

21 measures the goal and protects the kids. So

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1 that's really the charge to the group is how do we
2 make this work?
3 Liz, you're up next.
4 MS. KING: Yeah, just to sort of round
5 out the basic education thing before moving into
6 another point...
7 I absolutely agree with the clarity.
8 And anything that sort of creates ambiguity for
9 auditors I think doesn't serve any of us well.
10 I think we would likely have different
11 interpretations. Auditors are likely to have
12 different interpretations. So I think one of our
13 goals is going to be the greatest clarity we can
14 get to minimize the discretion that auditors have,
15 just because there is a particular history on
16 auditors not supporting the best instructional
17 decisions or the best equity decisions.
18 I just wanted to sort of echo the
19 concerns about that in making sure that we have
20 clarity and are limiting the discretion auditors
21 have to make their own determination about things.

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1 And then in terms of a new issue, I
2 wanted to strongly push back on this exclusion of
3 funds from the calculation for the demonstration
4 of compliance. I wanted to push back on the
5 exclusion of funds expended for the intent and
6 purpose.
7 As we know, the intent and purpose of
8 Title I, while rooted in equity, is pretty broad,
9 and I think that that exclusion is just too broad,
10 and I worry that when a district does their
11 calculation to demonstrate their compliance, I
12 think they could just exclude way, way too much
13 under that. So I really wanted to express a high
14 degree of concern about that provision and ask
15 that it be stricken.
16 So, my proposal would be to strike 17
3(3)(b).
18 MS. PODZIBA: Ary?
19 MR. AMERIKANER: Sorry, Liz, when Kerri
20 asked -- this is our downside of not using colors.
21 When Kerri asked I should have pointed out that

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1 this is straight from the statute. So it can't --
2 we can circulate this part of the statute, because
3 it wasn't in the part that we sent. And I
4 apologize for that. That's my fault. But I
5 wanted to make sure you know that -- so it says
6 (D). It's Section 1118(D), and it says "exclusion
7 of funds for the purpose of complying with
8 subsections (B) and (C)".
9 So (B) is the Supplement Not Supplant
10 section and says "An SEA or LEA may exclude
11 supplemental state or local funds expended in any
12 school attendance area or school that meet the
13 intent and purpose of this part".
14 MS. KING: I've been told.
15 MR. AMERIKANER: I'm sorry, I should
16 have said that before, and I apologize for that.
17 MS. PODZIBA: Marcus.
18 MR. CHEEKS: So that is what I wanted
19 to bring back, that the national organization
20 spent some time going through the actual statute
21 and trying to line up where the brief aligned to

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1 the law.

2 So, actually what you just pointed out,

3 it creates I guess -- the biggest conundrum is

4 that much of what we're talking about is aligned

5 directly to the law. And in an effort to try and

6 carry out our role in terms of finding a solution,

7 one of the things I wanted to point out, the

8 auditor aspect is a critical factor. The basic

9 education program becomes also a critical factor.

10 In my state, the question was moved

11 around, How do we determine this piece? In some

12 respects we can look at the manner in which our

13 legislature awards funds to the actual school

14 districts.

15 There is, at least to some extent in

16 that formula process, a mechanism for determining

17 the actual required areas that funds should flow

18 and are being awarded to schools.

19 Even though at the doorstep of the

20 school, the school district still has a great deal

21 of latitude in terms of assigning those resources,

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1 be that teacher units, be that for instructional
2 supports, they still have a great deal of latitude
3 there.
4 So one of the things that may offer
5 some help for a number of the problems that have
6 been brought forward is, if under item romanette
7 (ii)(A)(b), if there could be possibly a (c) that
8 offers an "other" that gives some room for the
9 innovative approach that was mentioned earlier and
10 possibly some leeway for that out-of-the-box
11 thinking in terms of what's being used to
12 determine that basic educational program that may
13 not be listed specifically here in the statute.
14 I think also another end-around way of
15 getting to this point, and I don't know how much
16 leeway we'll have in this, simply because it is
17 listed in the law, if there was a way for (a) and
18 (b) to be somehow a "such as," and I know that
19 that's probably not possible because of the
20 verbiage that we're dealing with.
21 The final piece that I want to bring to

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1 I guess some type of question is, when we look at
2 the exceptions and we start talking about the
3 intent and purposes of Title I part (A), is that a
4 step away from the school focus, the school model
5 of measuring Supplement Not Supplant, the
6 schoolwide model of measuring Supplement Not
7 Supplant?
8 Because under that process we would
9 generally be looking at, from a state side and
10 probably from a legal standpoint, if the state had
11 a comparable program that would align itself to
12 the intent and purposes of Title I part (A), and
13 the difficulty in that is, at least that I've
14 always struggled with is, unless the state
15 actually has a program that's carrying out the
16 same tenants of either the schoolwide or the
17 alternative assistance program, you don't really
18 know if you're getting to the true essence of the
19 intent and purpose.
20 So I'm wondering specifically where and
21 how should that area land.

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1 But those are my two points at this
2 time for kind of a pathway forward around a number
3 of clearly identified problems that I, for the
4 record, agree with and can see in a real sense
5 every day.
6 MR. AMERIKANER: I just wanted to maybe
7 respond a little bit to the question there at the
8 end, Marcus, about how the intent and purposes of
9 Title I might -- what does that mean and what does
10 that look like.
11 We have put out Guidance on this in the
12 past. That part of the statute is not new. So
13 generally we have said that a program meets the
14 intent and purposes of Title I if it is either
15 "implemented in a school with at least forty
16 percent poverty and" -- and so these are all
17 and's, so sorry. There's a few things that are
18 and's and then I'll give you option (B).
19 So the first option would be "if
20 implemented in a school with at least
21 forty-percent poverty, is designed to promote

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1 schoolwide reform and upgrade the entire
2 educational program at the school, is designed to
3 meet the educational needs of all students in the
4 school, particularly those who are not meeting
5 state standards, and uses the state assessment
6 system to view the effectiveness of the program".
7 So that is one way that we have
8 described it, or "it serves only the students who
9 are failing or most at risk of failing to meet the
10 state standards, provides supplementary services
11 to participating students designed to improve
12 their achievement, and again uses the state's
13 assessment system to review the effectiveness of
14 the program".
15 So, in other words, if the services
16 would be allowable under Title I, then they would
17 be considered to meet the intent and purposes of
18 Title I.
19 MS. PODZIBA: So, Marcus, it sounded
20 like you put out a conception proposal as opposed
21 to a verbal response. Should we discuss it? Is

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1 there a specific language that you would like us
2 to comment on?
3 MR. CHEEKS: So I guess the only
4 specific language would be adding (a) (b) and (c)
5 and listing "other," and that would -- "as an
6 optional methodology for measuring Supplement Not
7 Supplant".
8 MR. AMERIKANER: What I'm struggling
9 with, Marcus, is the way the lead-in is written
10 is, an LEA may determine any methodology it will
11 use, the methodology it will use, provided that
12 the methodology in an (a) and (b) are sort of the
13 safeguards about sort of describing the results of
14 that methodology.
15 So if we added an "other," it would
16 just be an "other".
17 I think I understand what you are
18 trying to do. I'm just not sure that it --
19 MS. JACKSON: It makes the safeguards
20 moot if there is an "other". We could disagree on
21 the safeguards if those are the appropriate

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1 language to use, but if you're like, here is
2 safeguard A, here is safeguard B, here is C, and
3 you don't have to follow any safeguards, then
4 they're moot.
5 MR. CHEEKS: And I guess as I mentioned
6 earlier, the problem with this is we're dealing
7 with the specific language of the statute.
8 Here again, crude approach -- you don't
9 think we are?
10 MS. PODZIBA: I suppose the question is
11 is there a way to define another set of
12 safeguards?
13 MR. CHEEKS: Yes.
14 MS. JACKSON: Is it possible to get a
15 copy of the text with color, because I am trying
16 to go back and forth and I'm not successful with
17 that. I think it would save us time.
18 MR. AMERIKANER: We can work on that.
19 MS. PODZIBA: Maybe we put a
20 placeholder in some other safeguard that defines
21 it in a way other than (a) and (b).

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1 Derrick?

2 MR. CHAU: Ary, you and Kay mentioned

3 before when a district was unable to provide a

4 basic education program with its state and local

5 funds, and I think, well right now our economy is

6 pretty good and our states have some funding.

7 That hasn't always been the case, and I'm

8 wondering if we have this requirement around basic

9 education program if the state does have a

10 definition of it but knowingly does not fund that

11 level, which happens, when times get tough, as

12 recently happened, what happens in those

13 instances? Would then the schools be unable to

14 utilize their Title I funds?

15 I'm just wondering what the consequence

16 would be for that because that is definitely a

17 real scenario in California where our school

18 districts, during the recession, were not funded

19 fully.

20 MR. AMERIKANER: I actually would

21 love -- I certainly hear the point you're making

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1 and the point that Rich was making and would love
2 suggestions about alternative approaches to this.
3 The intent we're trying to get at here
4 is just literally you're able to keep your schools
5 open and running without Title I funds. So if you
6 have a sort of more specific way that we could
7 frame that, I think we're very much open to
8 suggestions.
9 I appreciate the point you're making,
10 as well, so if there is a way that we could come
11 up with something.
12 MR. CHAU: Let me think about that,
13 because I worry that then the unintended
14 consequence of this, which is always I guess
15 something that my mentors have made me think about
16 whenever determining policies, is the unintended
17 consequence of this might be that states and local
18 districts set a basic education program definition
19 that is so low that they'll never reach it.
20 So that is sort of a -- you know,
21 there's consequences to this. So I'll have to

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1 think about that and talk about it just to figure
2 out -- I just want to put that out there. I'm
3 just curious.
4 In those instances, the schools I
5 believe were still able to utilize Title 1 funds,
6 correct?
7 MR. AMERIKANER: The only experiences I
8 know of, and Kay can tell you more, are the ones
9 that I described. So they were pretty low-level
10 floors.
11 MS. RIGLING: And I think they
12 absolutely can use their Title I funds, they just
13 couldn't use them for bussing to get the students
14 to school. They had to figure out another source
15 of funds for the bussing. They couldn't use them
16 for, in one case, the second trade teacher, but
17 they could use them to provide other supplemental
18 services.
19 MR. CHAU: Yeah, because I know my
20 concern is that in general local districts set
21 some policies around class size and whatnot, which

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1 they inevitably break in times of harsh economic
2 conditions, and so some might interpret that some
3 of those norms might be the basic education
4 programs that they are no longer meeting, which
5 then require them to utilize Title I funds to
6 balance that out.
7 So just an example and a very real one
8 from recent history. So, definitely think about
9 how we can address that.
10 MR. AMERIKANER: Thank you.
11 MS. PODZIBA: Tony?
12 MR. EVERS: This is a similar question.
13 If Wisconsin did find a basic education program,
14 and the district was found by an auditor to not
15 meet that. What's going -- I think it's the same
16 thing. How do we rectify that? Withhold Title I
17 funds for poor kids? I don't think so. That
18 would be kind of moving in the opposite direction.
19 But frankly that's the only end game there is,
20 right?
21 MR. AMERIKANER: Well, it might be

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1 helpful for us, and Kay is probably the best
2 person to talk to regarding the general toolkit
3 that we use and we have when thinking about
4 potential problems of violation of Title I, and
5 certainly it doesn't go as far as withholding
6 Title I funds from poor kids.
7 Do you want to talk about the Title I
8 exceptions?
9 MS. RIGLING: I think if there was a
10 violation of Supplement Not Supplant, and there
11 have been in the past, the remedy is usually to
12 require the state to repay from non-federal funds
13 the extent of the violation.
14 So, we would not be withholding Title I
15 funds in that case. The district would be getting
16 all of the Title I funds to which it was entitled,
17 but the state would repay out of state or local
18 funds the amount of the violation.
19 I don't think anybody thinks that
20 that's even a good solution. I mean, that's a
21 penalty, but that doesn't do anything to help the

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1 students who perhaps didn't receive supplemental
2 services in the year of the violation.
3 So obviously that's why we're trying
4 here to do some regulations, that obviously aren't
5 clear enough, to try to prevent those kinds of
6 things from happening where we do have more clear
7 guidelines, so that we're not leaving it up to the
8 auditors.
9 MS. PODZIBA: So, we have some more
10 comments, but I hear concern about basic education
11 program, and I hear flexibility on the part of the
12 Department.
13 So, if there are ways to choose other
14 words or further define that, I think that's the
15 challenge that we have here.
16 Richard, you're next.
17 MR. POHLMAN: Sure. I think the two
18 questions I have is, you know, I will again --
19 I'll start my record again.
20 I think that as we approach these items
21 that are very hard to define in Regulation, that

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1 is where Guidance becomes a much more appropriate
2 tool. I will put that out there.
3 The second thing is that, as Derrick
4 was talking about, I'm once again reminded in our
5 briefing we talked about that there are three
6 fiscal tests and three fiscal control rules.
7 I think that we have to be careful to
8 not put rules in here that may conflate some of
9 MOE requirements that could serve as protections
10 and guidelines for precipitous drops in
11 state-level funding, for instance. That's
12 something that needs to be covered under MOE.
13 Again, as I always talk to legislators
14 and others, and I try to keep in mind through my
15 work, is that you are trying to regulate to the
16 most narrow type of exception that we can think
17 of, or the worst case scenario. I think that that
18 becomes very difficult to do in a way that doesn't
19 have unintended consequences.
20 So again Guidance I feel is always a
21 more appropriate place to do that, and it's clear

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1 that we're all struggling here to try to provide
2 you with succinct language that wouldn't get to a
3 list that would, you know, plug the federal
4 registry.
5 So, I would just put that out there as
6 a possibility of striking this and then with the
7 Department's understanding that they could carry
8 this forward in Guidance.
9 MS. PODZIBA: Aqueelha.
10 MS. JAMES: I'm just thinking about how
11 this may affect the school district that's all
12 ready doing a very good job at utilizing funds
13 appropriately.
14 What that means with the progress that
15 we've made within our own schools, particularly
16 staff, and when I think about various forms of
17 evaluation attracting and retaining highly
18 effective teachers, I'm starting to question what
19 this will do to support that work and allow us to
20 continue to make positive impact.
21 MS. PODZIBA: Mary Cathryn?

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1 MS. RICKER: I wanted to speak on (A),
2 so if you wanted to collect --
3 MS. PODZIBA: No, that's ok.
4 MS. RICKER: Ok, great.
5 So I have a question on capital (A)
6 under School Costs and Services where you talk
7 about results in the LEA spending, the amount of
8 state and local funds for people in each Title I
9 school.
10 Given what you said -- and I really
11 appreciate about how course transfers are a
12 really, really bad idea -- I'm wondering how you
13 and your team thought of how you do this, either
14 absent new money or absent course transfers and
15 resignations.
16 MR. AMERIKANER: So I'm happy to
17 respond at the level we thought of, and also
18 people thought -- we've thought about a couple of
19 different things.
20 We've thought about the potential for
21 paying teachers more who choose to work in

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1 high-need schools, Title I schools. We think it
2 is a hard job and we should be rewarding teachers
3 who are willing to do that.
4 We have thought about things like
5 paying for additional support staff, wraparound
6 services that we know are really important in
7 Title I schools where they're serving high
8 concentrations of students living in poverty.
9 We've thought about choosing to pay for
10 extended learning time in those schools.
11 We've thought about, you know, a
12 variety of -- I think you would probably be in a
13 great position to tell us what the best and sort
14 of important needs are in Title I schools, but I
15 think we know that it takes time too.
16 But if you don't have new money, right,
17 as you pointed out, if you don't have new money to
18 put towards this problem, it takes time to think
19 about moving money around and re-budgeting.
20 So that's why we have tried to propose
21 this with a pretty long phase-in, roll-in time to

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1 help districts -- give districts time to think in
2 a -- I think in advance and think about whether
3 they would need to move any money around.
4 I will say that my understanding is
5 that, in most places, this would not require a ton
6 of movement of money, so, that we aren't thinking
7 that this would be like in a -- no one wants to
8 see any like big huge required budget moves
9 overnight. I think that we all know that that can
10 lead to bad things.
11 So we thought of those as some
12 potential options. You can see that as one way to
13 try to retain teachers in Title I schools. You
14 might reduce class sizes to make the working
15 conditions better.
16 You can see a lot of different things
17 for how a district might choose to try to do this.
18 MS. RICKER: And you don't anticipate
19 that taking new money?
20 MR. AMERIKANER: I think in some cases
21 it could take new money and in other cases

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1 districts could plan over time to reallocate the
2 existing money.
3 I think it could be done either way,
4 depending on, to Derrick's point, you have more
5 money and it's a time of relative wealth, or you
6 have not more money and it's a time of relative
7 non-wealth, or the right word is recession.
8 MS. RICKER: No, as someone who has
9 spent a considerable amount of time at the
10 bargaining table negotiating for these sorts of
11 things, you know, for different student/teacher
12 rations in our Title I schools versus our
13 non-Title I schools, and in lots of license areas
14 as well, as well as enhanced wraparound and
15 support services in our Title I schools versus our
16 non-Title I schools, while still trying to
17 provide, perhaps not this definition, but a basic
18 level of service for all children, because, you
19 know, so there is this comprehensive package of
20 the services that all children deserve... I know
21 that at the bargaining table I come up against the

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1 question of where the funds for what our students
2 deserve, where they're going to come from.
3 MS. PODZIBA: Thank you.
4 I think we can get another point in.
5 Liz?
6 MS. KING: Yeah, I just wanted to
7 strongly caution, the idea of using teacher
8 evaluation in a fiscal requirement is just a
9 little bit terrifying. I think we've seen some
10 bad policy happen as a result of trying to use
11 teacher evaluations for purposes other than what
12 they should be used for. So I would just strongly
13 caution against that.
14 I certainly recognize that --
15 MR. AMERIKANER: Sorry, Liz, what are
16 you responding to? I just wanted to clarify. I
17 want to make sure that everyone understands that
18 that's not what we are proposing.
19 MS. KING: No, I hear that. So this
20 question that salary is not a proxy for the
21 quality of a teacher, and then there was a

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1 recognition that there has been progress and
2 innovation around teacher eval and different ways
3 of looking at differences in teacher quality, and
4 that's great, and that is very much about HR
5 policy and should be handled that way.
6 So we're only talking about dollars,
7 because this is a fiscal requirement. So I would
8 just want to be really careful that we're not
9 moving into like things that I think should be
10 collectively bargained but that are certainly
11 about personnel.
12 And we're just talking about funds is
13 what it says in the law... because I've been
14 reminded that what it says in the law is relevant,
15 so since we're talking about funds.
16 The other piece I think -- a couple of
17 things about this idea of disruption and moving
18 money around; on the one hand we need more money
19 in the system. I think generally we are
20 underfunding a lot of our school districts and
21 they don't have the resources that they need.

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1 So just as a general principal, and
2 that's something we fight in other spaces, but if
3 somebody else made that argument, we can't
4 appropriate money through a regulation. That is
5 the limitation here.
6 So to that degree, the reason that
7 there is this inequity is essentially that
8 wealthier schools are benefiting and poorer
9 schools are losing. So the sort of disruption
10 would be to change that dynamic, and avoiding that
11 disruption is to preserve a system in which poor
12 children subsidize the education of non-poor
13 children.
14 And I think I just wanted to sort of
15 put that on the table.
16 In terms of ways of doing this, I think
17 the way to do this is that there should be more
18 money from the state. That is how this should
19 happen.
20 In the absence of that, I think there
21 are options -- you know, we know one of the

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1 biggest differences in per-people spending at the
2 school level, I think Karen Hawley Miles talked
3 about this last time, is the differences in the
4 size of schools. So a small school is an
5 expensive school as a general matter.
6 So, talking about, you know, maybe you
7 have a low-poverty high-performing school, and you
8 increase the number of slots in that school as a
9 way of lowering the per-people expenditure without
10 actually limiting the services available for those
11 wealthier children, which then frees up more
12 services to serve children in other schools, would
13 be one option.
14 And then, you know -- again I think
15 it's important to remember that the premise of all
16 of this is -- and I will say, I'm nervous about
17 the degree of flexibility being provided here. I
18 mean, this is flexibility in the use of funds that
19 is far beyond that which has ever existed before,
20 and it just makes me incredibly nervous.
21 But, you know, as long as we preserve

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1 the equity protections, I think there's an
2 argument to be made for why flexibility is
3 valuable, sort of in supporting improved
4 instructional programs.
5 But, the district has the flexibility,
6 and so whether it's a decision about maybe you
7 have more people in Central Office than should be
8 in Central Office, and that more of those
9 positions should be moved into classrooms and
10 moved into schools to support poor children.
11 So that would be another option, I
12 think, in the absence of new money -- obviously I
13 always prefer new money -- but in the absence of
14 new money, that would be another option.
15 MS. PODZIBA: Alvin.
16 MR. WILBANKS: I'd like to go back
17 again to the general program and to add on to some
18 of the comments that have been said.
19 I agree with Principal James that I'm
20 afraid that districts that are doing a good job in
21 this are going to be penalized, not to death or

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1 anything like that. We'll all live. But again
2 I'm getting back to how this plays out in the
3 system, how we continue to educate all children to
4 the highest level possible.
5 It seems to me, if you look at the
6 compliance section, the big issue here is the
7 averaging of the per-people expenditure of a
8 student. And again, I think the Department did a
9 good job when they rolled out their 2015 plan that
10 really put a lot of emphasis on methodology.
11 I have with me six pages of how we go
12 about funding all schools. Every school gets
13 everything on this page, on these six pages.
14 And it doesn't escape my attention that
15 the Title I dollar is is not in addition to that
16 to those Title I schools.
17 But when you get back to a per-people
18 average, then you just sort of -- that just sort
19 of goes out the window.
20 And I think there probably needs to be
21 more emphasis put on the methodology, and again, I

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1 think everybody that knows anything about running
2 a school or a district would understand that, if
3 you apply your methodology to all schools equal
4 for the state and local funds, then that gives
5 every school the same amount of money.
6 Now, it's not the same dollar amount of
7 money, but it's the methodology of how you go
8 about getting it by the basic education costs.
9 One school -- we have schools that are
10 forty-three hundred. I think our smaller school
11 is perhaps six hundred, and I think we're not
12 unlike districts across the country.
13 So as we use that methodology that
14 applies to all students, state and local funds,
15 and then you apply your Title I funds to those
16 schools -- now there are some central services
17 that you do provide for all Title I reserve, five,
18 seven percent, whatever that number happens to be,
19 tell them that you're in the state level, but
20 again you've got some of that same reserve and
21 allocation.

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1 So I think if we tend to focus on how
2 can we reach the intent of Title I, without --
3 does the law require you average the appropriate
4 funds? Is that in the statute?
5 MR. AMERIKANER: You want me to
6 respond?
7 MR. WILBANKS: Yes.
8 MR. AMERIKANER: So first the law
9 requires that you average an end section in your
10 reporting, in 1111(H), a cross-reference, and the
11 law then also requires in the Compliance section
12 of Supplement Not Supplant, as we've seen, and I
13 don't want to state it wrong -- let's go back and
14 look at it. It's that "A district shall
15 demonstrate that the methodology used to allocate
16 state and local funds to each school receiving
17 assistance under this part insures that such
18 school receives all of the state and local funds
19 it would otherwise receive if it were not
20 receiving assistance under this" --
21 MR. WILBANKS: I don't have a problem

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1 with that.

2 MR. AMERIKANER: "If it were not

3 receiving assistance under this part," if it were

4 not a Title I school, right, so all of the funds

5 it would otherwise receive.

6 Actually I was going to ask you a

7 question, if you don't mind, in your six pages

8 of --

9 MR. WILBANKS: I'll give them to you.

10 MR. AMERIKANER: No, I'm just curious.

11 Do you know, do all of your Title I schools get

12 the same amount of -- get as much state and local

13 funding as your non-Title I schools?

14 MR. WILBANKS: Actually they really get

15 more, just on a per-people amount, and it's a

16 grade span amount. Elementary get one amount,

17 middle schools get another, high schools get

18 another.

19 But then we break it up. The lowest

20 amount are those schools that have a grade that

21 goes from one to twenty-four, from twenty-four to

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1 forty-nine they get more, from fifty up they get
2 more. So, just in that initial allocation, all of
3 that is state and local, ok.
4 Now, every now and then it's difficult
5 to separate state from federal funds, but Title I
6 is easier. But generally speaking what we had at
7 the state and local level, that goes to every
8 constituent.
9 MS. PODZIBA: Ok --
10 MR. WILBANKS: And again it gets back
11 to the methodology that you use, and I think the
12 methodology is a better way to provide equity to
13 really serve and preserve the integrity of the
14 programs that are really designed to educate the
15 children in a school which can be very different
16 from one school to the other, the basic -- some of
17 the basic problems would be --
18 MR. AMERIKANER: It sounds like if your
19 Title I schools are all getting the same amount or
20 more than your non-Title I schools, then good.
21 MS. PODZIBA: Ok, excuse me. There are

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1 a lot of comments.

2 So Ary, I want to try and get all of

3 these comments in, unless there's something that

4 you absolutely need to respond to.

5 MR. AMERIKANER: No.

6 MS. PODZIBA: Thomas, you're next.

7 MR. AHART: A couple things I wanted to

8 lift up in regards to the same -- demonstrating

9 the same program school by school by school.

10 One of the things that happens I think

11 inadvertently is when we're talking about Title 1,

12 we start to think that all of our students with

13 needs relative to the code are being served in

14 Title I schools, which just isn't the case.

15 So under one of the things, we have our

16 own system of allocating resources and we support

17 at a higher level some of our schools that are not

18 Title I, but in most districts would be Title I

19 schools, you know, over seventy percent reduced

20 rate, but they don't qualify for Title I in our

21 district because they don't have enough money to

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1 go around.

2 This is one thing I wanted to lift up

3 in terms of flexibility for districts to use their

4 resources, their state and local resources to its

5 best effect to meet the needs of all of our kids.

6 The second thing I would like to

7 highlight is, in the code it says "Nothing in this

8 title shall be construed to mandate people as

9 spending per-people for a state, local -- a state

10 or local education agency or school," and this

11 seems to fly in the face of that.

12 MR. AMERIKANER: Susan, can I --

13 MS. PODZIBA: Sure.

14 MR. AMERIKANER: I do want to respond

15 to that.

16 First of all, thank you for pointing

17 that out. It is certainly a relevant provision in

18 the statute, and I do think we would be careful to

19 not violate or to write around that.

20 Nothing in the proposal that we put out

21 would require equalized spending. I think it's a

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1 couple of different reasons for that. One is that
2 we are requiring that a district compare each
3 Title I school to the average non-Title I school.
4 So non-Title I schools averaging across them sort
5 of implies that they have different spending.
6 Similarly each Title I school could spend anywhere
7 as long as it was at least as much as the average
8 of non-Title I schools, and then -- I thought
9 there was another point.
10 But I guess those are my two points,
11 that it does not require equalized spending.
12 MS. PODZIBA: Regina -- oh, Thomas.
13 MR. AHART: I would suggest that that
14 equalizes a floor, and so it is getting to that
15 equalizing concept.
16 MS. PODZIBA: Regina.
17 MS. GOINGS: Thank you.
18 In the absence of funding or limited
19 funding I'm going to throw something out there for
20 people to consider.
21 You've got valuable resources at your

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1 schools all ready. Many of the SLPs are not --
2 and I'll give a prime example of the Title I
3 schools. The SLPs are there and I have the luxury
4 of having SLPs assigned to one school. That's a
5 real luxury for schools. They're there to provide
6 a service to the general population, generalized
7 students as well as specialized students.
8 In the general population, the most
9 valuable resource on campus is a speech
10 pathologist when it comes to literacy. She's
11 there to support the general ed teacher. She's
12 there -- we piloted a program several years ago in
13 a Title I school where the SLP worked on literacy
14 in one first grade classroom and we saw those
15 scores go up astronomically to the point where the
16 principal bought into the concept and provided
17 funding to extend that program to all first grade
18 classrooms.
19 So look around your schools and find
20 the resources that are there to support you, and
21 it's an asset for all students and not just a

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1 select group of students.

2 MS. PODZIBA: Thank you.

3 Aqueelha?

4 MS. JAMES: So I just wanted to go back

5 to a couple of comments that were shared, one in

6 regard to thinking about funding versus HR and/or

7 personnel in that it's very clear that within the

8 District of Columbia public schools that we do

9 both. We have to appreciate all perspectives in

10 the sense that highly-effective teachers are not

11 just at non-Title I schools. They're dispersed

12 throughout the district.

13 In fact, we see countless times -- and

14 I'll speak specifically to my former school, John

15 Burroughs Education Campus, which is a Title I

16 school with about ninety-nine percent of students

17 with free and reduced lunch, and being the

18 principal, there was a lot of autonomy given to me

19 that allowed me to pick particular interventions

20 and/or programs that support the students that are

21 in our building.

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1 I've shared during session one that we
2 achieved a lot of progress, and when I say "we,"
3 meaning the students have learned a lot based upon
4 the decisions that I have been able to make with
5 the current process in place as it relates to
6 budget.
7 And so I can't express enough how
8 concerned I am about what this can possibly do to
9 the progress we've made.
10 MS. PODZIBA: Let me get a few more
11 comments in.
12 Ryan.
13 MR. RUELAS: So, I'm from the great
14 state of California, and we do weight the student
15 funding, ok, and it's awesome. It's great.
16 My problem with what is written here is
17 that the way it's written itself is really --
18 well, first off, I just want to make it clear
19 that, the history of this supplant -- or the whole
20 history of the Supplement Not Supplant itself was
21 to insure that LEAs do not decrease state and

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1 local funds to Title I schools because they
2 participate in Title I. Correct?
3 MR. AMERIKANER: Wait, sir. I didn't
4 mean to be nodding to you. I don't know what you
5 said.
6 MR. RUELAS: I said the history of the
7 whole issue of Supplement Not Supplant is to
8 insure that the LEAs do not decrease funds to
9 states and Title I funds, because they participate
10 in Title I, correct?
11 MR. AMERIKANER: Well, I would say it's
12 to insure that Title I funds are actually
13 providing supplemental services.
14 MR. RUELAS: Ok. So the problem that I
15 have, coming from California where we're using a
16 weighted student funding, is that it could really
17 punish and incentivize weighted student funding
18 methodologies, and the reason why is because the
19 proposed regulation actually compares actual
20 per-people spending in Title I schools to average
21 per-people spending in non-Title I schools. And

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1 so districts themselves would be out of compliance
2 if heavier weighted student concentrations occur
3 in non-Title I schools.
4 So, for example, special education
5 students in California, they're weighted more
6 heavily in regards to the funding that they get
7 than other student groups. Ok? Now this, as a
8 result, could skew spending in non-Title I
9 schools, ok.
10 So, what is being proposed here could
11 possibly incentivize concentrating or sending
12 students that get higher weighted students, such
13 as special ed students themselves, to Title I
14 schools. You know?
15 It's going to be very complicated for
16 us, and it's kind of a conflict of the
17 methodology.
18 MR. AMERIKANER: Susan, I know you're
19 telling me I should not -- Susan is shaking her
20 head, but I do think this is an important -- I do
21 think it's an important point to respond to, and

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1 it is similar to one that Tony brought up that we
2 really never engaged on. I think it's important,
3 this weighted student idea.
4 We thought through this quite a bit as
5 to how does a weighted student funding formula
6 work in this case? And actually I think weighted
7 student funding formulas, as far as I know, all of
8 them weight for poverty, right? So students
9 with -- or schools with higher concentrations of
10 students in poverty are supposed to get more
11 money, and I know they also weight for other
12 things, like students with disabilities and other
13 things, but that poverty is one of the factors
14 considered. And we know that Title I funds are
15 supposed to go to schools with higher
16 concentrations of poverty.
17 So it actually feels that districts
18 following a weighted student funding formula would
19 meet this requirement, because they would be
20 spending more money in schools with higher
21 concentrations of poverty.

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1 I do hear your concern about the
2 students with disabilities, and if you have a
3 specific suggestion around that, I'm more than
4 happy to hear it.
5 But I think actually our point was we
6 wanted to make sure that we were allowing
7 districts to determine the methodology that they
8 would use. So whether that's a weighted student
9 funding formula or something more traditional that
10 a lot places aren't -- California doesn't use
11 weighted student funding formulas. We wanted to
12 make sure that this would work in either case, but
13 actually intentionally thought about how this
14 would work in weighted student funding formula
15 locations and intentionally try to make sure that
16 this would work.
17 So if you have specific suggestions
18 about that, I'm happy to hear about that, as to
19 whether there's any tweaks that we could make.
20 But I definitely want to make sure that that works
21 with this kind of progressive system.

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1 MS. PODZIBA: Ok, we've got five more
2 cards up. I'd like to take those cards and then
3 we'll break.
4 Lara.
5 MS. EVANGELISTA: I'll be brief,
6 because I think Aqueelha and Ryan both said my
7 concerns.
8 I just wonder if there is a way that we
9 could -- similar to what Marcus is saying, there's
10 something in there that we could write in,
11 something about "weighted formulas or other
12 innovative methodologies that are currently being
13 used" or something like that that's specifically
14 in there. Because coming from New York, having a
15 weighted formula that has really -- and having the
16 autonomy to use those funds to serve the needs of
17 my students, you know, I can see that it works.
18 I mean, I'm also a New York City public
19 school parent, and I could tell you that my kids
20 attend a school that is not a Title I school and
21 my kindergartners -- well, they're not

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1 kindergartners any more, but when they went to
2 kindergarten, their class sizes were bigger than
3 my kids' class sizes, which were a
4 ninety-five-percent poverty.
5 So that methodology is working, it's
6 working well for a lot of schools, and I would
7 hate for these regulations to stop that work from
8 happening.
9 MS. PODZIBA: Kerri?
10 MS. BRIGGS: This whole discussion is
11 so interesting, and coming from a southern state
12 where it's not really generally polite to talk
13 about money... this is all a little uncomfortable.
14 But I think this is such a challenge to
15 figure out how to write regulations to address
16 every unique situation. And I even heard some of
17 the solutions that were being offered as solutions
18 that strike me as very localized decisions, like
19 moving teachers, and to your point, moving
20 students' class sizes up and down, whether or not
21 teacher effectiveness is considered, like all of

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1 those things that are so critical and so local.
2 I don't know. I guess I'm just like, I
3 feel for you in trying to write this reg, because
4 it seems sort of impossible, and as I talked to
5 people back home, you know, I immediately came up
6 with like three different districts that do
7 budgeting differently. And like trying to think
8 through, some of them we'd probably like; some of
9 them we probably wouldn't.
10 I also think about, like Dallas, where
11 I live, you know, the solution really picks Dallas
12 as being -- and being I'm a Dallas supporter,
13 being like an active parent or an active citizen,
14 and I don't know. I can't figure out what I would
15 change or what I would strike or add. I just
16 really I guess want to echo that I see the
17 complication. I see what it's like.
18 MS. PODZIBA: Audrey?
19 MS. JACKSON: I have so much to say on
20 this issue. I'll try to keep this brief.
21 We also have weighted student funding

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1 in Boston public schools and pulled up our
2 template here. Yes, definitely high poverty is an
3 area.
4 I guess I'm confused, and I want to
5 hear other people's points. I'm confused about
6 how making sure that high-poverty schools that are
7 receiving Title I funding, have supplemental
8 funding, would hurt other places. It doesn't make
9 sense.
10 I mean, I have principals, teachers and
11 people I totally trust and respect. So I'm not
12 saying you are wrong, but I'm a little confused
13 about it.
14 And with Alvin, apparently you have
15 solved every equity issue in Georgia, and I don't
16 mean that totally rudely, but if the idea is that
17 everything is working well and that these schools
18 where everyone who is successful is going to be
19 harmed by insuring that kids in high-poverty
20 schools have their supplemental funding is really
21 confusing to me.

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1 And so that is not again meant to say
2 that anyone's concerns are invalid, but as a
3 teacher who works in a high-poverty district with
4 high-poverty kids, and more often than not schools
5 with wealthier families, wealthier students, who
6 all ready have an increased capacity to fundraise
7 within -- fundraise from their parent population
8 and solicit investors, that there are ways that
9 are not purposely discriminatory against kids, but
10 there are ways that the funds always seem to end
11 up at those schools and not necessarily at the
12 schools where the children and their families do
13 not have as much of a voice, or they're so used to
14 not being heard that they're not necessarily
15 continuing to speak up.
16 At least from what I read, low income
17 schools and geographically, tax rates, those
18 families are much more willing to be taxed at a
19 higher rate in those schools, and so it's not out
20 of a lack of commitment or investment. I'll stop
21 rambling now. I'll speak more later.

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1 I would love to know how that would
2 potentially negatively impact schools. To me, I'm
3 confused.
4 MS. PODZIBA: Ok, Liz is the last
5 comment before the break and then, Alvin, we'll
6 pick up with your comment.
7 Liz.
8 MS. KING: Yeah, a couple of different
9 things.
10 On the question of flexibility, I mean,
11 this is, like I said, discomfort with flexibility.
12 This is some serious flexibility. You could
13 decide as an LEA, obviously subject to your
14 collective bargaining and state law and board
15 policy, you know, to only hire band teachers at
16 your school and you'd be compliant with (A). So
17 your band teachers could do all of the teaching
18 and that would be compliant, as long as you were
19 spending the money.
20 I think that again, great big piles of
21 flexibility in here... I just wanted to reinforce

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1 that.

2 And I mean, there's sort of an idea of

3 like, looking at the methodologies that a district

4 used, again, I'm just not comfortable with the

5 level of discretion an auditor would have to go

6 through and unpack all of the ways that a district

7 chooses to spend its money.

8 I mean, giving the auditors that power

9 to sort of decide whether, in part, When this part

10 of the money goes out that way, that's ok; When

11 that part of that money goes out this other way;

12 And when you have this other thing that does this

13 other thing... having that level of discretion for

14 auditors is not a good system.

15 And then an overall question or point

16 that I wanted to ask is, so we've heard examples

17 of, like, any district that, based on the

18 reporting, they already have to do, is compliant

19 under (A), then gets to go home and do other

20 things, right? Like they are no longer -- that is

21 all they have to do, other than also (B). So they

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1 still have to do (B), and (B) is a little bit

2 trickier. But with (A) what you're doing is

3 submitting data that you all ready have to submit

4 to show that you're all ready compliant.

5 The question I just wanted to ask is

6 when is it ok to spend more money per pupil in

7 wealthier schools, and why has that not been

8 supplanting when the Title 1 funds are filling in

9 the gaps in the higher poverty schools?

10 So I'm just interested. I think that's

11 sort of the core fundamental issue is in sort of

12 the (A) test is when would violating (A) not be

13 evidence of supplanting?

14 MS. PODZIBA: Ok, I'm going to suggest

15 that we take a break. It's 10:30. Let's come

16 back at 10:45.

17 (Recess taken.)

18 MS. PODZIBA: Ok, I'm going to ask for

19 everyone to sit down, please.

20 So I'm going to give Alvin a chance to

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21 speak, and then Rita, and then what I'm going to

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1 do is try and focus the conversation about how to
2 fix things.
3 Alvin.
4 MR. WILBANKS: Ok, thank you.
5 This is beginning to resemble the
6 presidential debate, so when somebody gets tagged,
7 you need to give them thirty seconds.
8 To my friend from Boston, I don't even
9 know what all the questions are, much less all the
10 answers. If we have many problems for which we
11 haven't solved, and if I came across saying
12 that -- obviously I don't believe I did -- I can
13 tell you it was tongue-in-cheek.
14 We're just trying to educate all
15 children. In doing so we're trying to design
16 programs that really are effective. We're trying
17 to make sure that we do abide by whatever the regs
18 are.
19 But I go back to really say,
20 methodology makes all the difference in the world,
21 and I think when you -- when we get -- this is

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1 America, and when we get that we can't trust
2 people, I just believed the assumption that we're
3 going to squander the dollars, and spend dollars
4 carelessly, so sure there's got to be checks and
5 balances. Sure there's some SOBs around.
6 At the same time, I do think we've got
7 to make sure that we have processes in place that
8 we can do what it is that we're supposed to do and
9 not really have to spend more time on trying to
10 make sure that we're meeting some requirement that
11 I think may be in many ways artificial.
12 I do think in the areas -- and I still
13 am relating my question, maybe ya'll need to ask
14 somebody else -- but does the statute require that
15 we average this? And that's still a question
16 that's out there. I won't expect you to answer
17 that until you check with somebody. Before we end
18 today, I would like that question answered.
19 So, my point in all of this is that I
20 think Title I was for a purpose, and I applaud the
21 Department's efforts in making sure that we get it

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1 and that its implemented as it should be, but we
2 can't add more requirements and regulations that
3 make it almost impossible to implement.
4 And when a district has again a
5 methodology that works for that district -- it may
6 not work for anybody else -- but when it works for
7 the district again in addressing the needs of all
8 students, you know, I don't have the right to just
9 focus on any one set of students. I've got to
10 focus on all of them. And that's what I think
11 this ESSA regulation requires us to do in the
12 final analysis.
13 MS. PODZIBA: Rita?
14 MS. AHRENS: I just wanted to comment
15 on the provision or the statement that allows
16 "basic education programs" that are defined under
17 state and local laws, and I wanted to speak on
18 this with pockets of my fellow parent advocates,
19 and I think it's important to really state that we
20 believe this is an incredible opportunity for
21 parents and students and other stakeholders at the

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1 local level to determine what the basic school
2 unit looks like, you know, and what the basic
3 education program encompasses.
4 To us this is a tremendous opportunity.
5 I don't understand the confusion, the pushback
6 against having this in the regulations. Because
7 this allows us to really meet the needs at the
8 local level. It allows us to look at the
9 population that we're addressing and say, All
10 right, we want to define our basic education unit
11 as having things like facilities, academic
12 programs, whichever ones we want, student
13 handbooks, parent engagement methods,
14 transportation. So we get to decide this at a
15 local and state level.
16 Yes, it's going to be hard to do that
17 definition, but just because it's hard doesn't
18 mean that we should not do it. And I want to
19 point out that Ary said we have until 2020 to
20 implement this law.
21 So, I think, you know, we should make

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1 the attempt to do this at the local level.
2 There's an amount of flexibility here that I think
3 is appropriate, and I don't think -- you know, I'm
4 confused and wondering why there's so much
5 pushback, because, you know, every stakeholder is
6 going to have the opportunity to provide input
7 into this, from teachers, to parents, to
8 administrators, to our legislators.
9 So, you know, let's try this.
10 MS. PODZIBA: So I appreciate the
11 thought of the presidential debates, because I
12 haven't felt that they are very helpful in getting
13 to policy questions. There is something about
14 scoring points, but not about policy, and since
15 we're really here to try to develop federal
16 policy, our conversation has to look a little bit
17 differently.
18 So, Rita, I appreciate you're raising
19 that, because that was what I was going to propose
20 is that there is the phrase "basic educational
21 program". It seems that it was in Guidance in the

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1 past and there is a lot of discomfort with it, and
2 nobody has a solution for resolving that
3 discomfort.
4 So I would propose that we spend some
5 time seeing if, as a group, people can come up
6 with whatever it takes to change that language,
7 refine that language, describe that language in a
8 way that is workable in a regulation as opposed to
9 Guidance, so that we could try to make some
10 progress on this issue.
11 So I'm going to take the cards and ask
12 you that say what you want to say, but I'm hoping
13 that we can focus our discussion on the question
14 of "basic educational program".
15 Liz?
16 MS. KING: I wanted to respond briefly
17 to Alvin's question about where the statute
18 requires.
19 So the old statute said that funds had
20 to be supplemental, had to include the Supplement
21 Not Supplant requirement, and then the test of

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1 demonstrating that went through Guidance.

2 So what happened was, in order to

3 change the Guidance and the auditing practice,

4 Congress changed the law. So now the law

5 prohibits the old test that was in Guidance. And

6 so historically the Department has determined how

7 to demonstrate -- required LEAs to demonstrate

8 compliance so they could get their Title I money.

9 So it is totally within regulation for

10 the Department to lay out this methodology for

11 demonstrating compliance, and otherwise it would

12 also be appropriate for the Department to do this

13 through Guidance, although I would rather it was

14 done through Regulation because in that we are

15 involved in that regulation process in a way we

16 are not involved in that Guidance process.

17 So, sorry, that was the short point on

18 there.

19 And then I just wanted to second -- I

20 do think that having the concept of a basic

21 educational program I think is important for

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1 supporting the long-standing intent of Title I.

2 MS. PODZIBA: Marcus?

3 MR. CHEEKS: I'm sitting here trying my

4 best to figure out a way to narrow our target in

5 dealing with this particular subject. And I want

6 to be sure that I'm correct in my thinking before

7 I offer this suggestion.

8 The reporting requirements, as well as

9 the actual law, is what we used to pull together

10 this draft regulation. But specifically when I

11 look at the Compliance section of school costs and

12 services -- is that correct?

13 MR. AMERIKANER: Are you asking that

14 question?

15 MR. CHEEKS: Yes, I'm asking that

16 question.

17 MR. AMERIKANER: So the whole

18 Compliance section is a way to clarify how

19 districts meet the compliance requirements in the

20 law, so, in the Supplement Not Supplant

21 requirements in the law.

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1 MR. CHEEKS: Ok. Knowing that the
2 romanette (ii), items (a) and (b), item (a) being
3 a specific area for reporting, but reporting not
4 to the extent that item (a) is listed, and then
5 item (b) being a part of the draft regulations,
6 these are the areas that I'm seeing as being the
7 primary sticking points, particularly when I start
8 thinking, and what I'm hearing about from some of
9 the local school district people when they speak
10 about the inequity that would come about with
11 high-poverty schools that are not identified as
12 title schools, but as a result they do have higher
13 paid teachers that would possibly have to be
14 removed or adjusted in order to be in compliance
15 with this piece.
16 So I'm still trying to figure out the
17 item (C) and what that option might look like --
18 and I'm proposing and asking the question at the
19 same time -- if we dealt with the basic education
20 issue and the equity problem possibly under
21 creating a floor or a threshold around what would

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1 be considered to be a school of high poverty.

2 So for example, if I'm still looking --

3 because at the local school level, from a state

4 level, I'm under the impression that schools have

5 a great deal of latitude under the statewide

6 model.

7 So if the school is high poverty and

8 that determination for poverty is forty percent of

9 poverty or more, then the flexibility of at least

10 using these resources, even though there's an

11 absence of having enough resources for everyone or

12 every school, the flexibility of the school

13 district using the resources would begin at a

14 school that's forty percent poverty or higher.

15 So I'm wondering if this test for

16 Compliance could deal with in some way some

17 flexibility around schools that are forty percent

18 or higher in poverty and somehow given some leeway

19 for possible non-Title schools that are, by virtue

20 of their poverty, a part of that process.

21 And I'm putting thoughts out on the

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1 table in hopes that maybe somebody else can hear
2 where we're going and possibly offer some other
3 suggestions.
4 Because at the end of the day, I think
5 we're stuck with some aspects of the law as it's
6 concerned and the reporting factor that is in
7 play. So I think we have to build on those pieces
8 that are required in order to still figure out the
9 latitude so that it doesn't disenfranchise other
10 entities because of the fact that there's high
11 poverty.
12 That's my suggestion.
13 MS. PODZIBA: Eric and Thomas, you're
14 in the cue. Should we hold off or --
15 MR. PARKER: I think, so hopefully.
16 MS. PODZIBA: Ok.
17 Janel, do you have some help with what
18 Marcus is trying to flesh out?
19 MS. GEORGE: Actually I have a
20 clarifying question for Marcus.
21 Are you asking maybe to add to the

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1 Exceptions section, "schools" -- and again I'm
2 just trying to clarify. Are you trying to add to,
3 for those demonstrating compliance or a threshold,
4 another poverty threshold for the school, or what?
5 I'm trying to clarify what your goal is
6 for those high-poverty schools that don't meet the
7 Title I -- that aren't Title I schools.
8 MS. JACKSON: This is very small, and
9 like would it help to say "Title I-eligible"? I
10 don't know if that's actually a useful thing to
11 throw out there, because I don't think I even a
12 hundred percent understand everything out there.
13 MS. PODZIBA: Liz, do you have help on
14 this?
15 MS. KING: Yeah, I will say sort of the
16 intent and the purpose of that I absolutely
17 support. My concern is it's outside the scope of
18 the SNS requirement, which is just about those
19 Title I schools that receive support and those
20 schools that don't.
21 I would say that given my support of

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1 the concept, I'm willing to ignore that and
2 have -- and make that larger point.
3 I do agree, I mean, it serves nobody if
4 what we end up doing is -- yeah, I'm trying to
5 think of what the right word is.
6 But I support the intent I think -- I'm
7 wondering, given the smackdown I'm still smarting
8 from, if "those funds used to serve or to meet the
9 intent and purpose of Title I," since that
10 exclusion is already in there, if that would fix
11 the problem.
12 So, like, if a state has dedicated
13 funding to serve high-poverty schools, that --
14 those -- I think, and Ary can reread the text she
15 gave before of how that's currently defined, but
16 my suspicion is that that current definition in
17 Guidance, which we could move into the reg if
18 folks wanted, or we could leave in Guidance, my
19 guess is that that would fix the problem that you
20 are raising. I did want to say that I am
21 sympathetic to and supportive of fixing the

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1 problem you are raising.

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

3 people think about that a little more.

4 Eric?

5 MR. PARKER: Yeah, definitely that's

6 one -- the second is a question -- but looking to

7 piggyback a little bit on what was raised as far

8 as possibly looking at ways to reduce possible

9 disruptions that the methodology may cause for

10 schools and school districts that are having

11 success and effectively implementing their current

12 methodology...

13 Looking at I guess under romanette

14 (iii) for Exceptions, so I guess just trying to

15 put a provision there or clause to not restrict

16 any innovation or particularly as relates to Title

17 I staffing -- that's a component that was raised

18 earlier -- so that that's not inadvertently

19 affected by potential changes in methodology.

20 But then, speaking back to methodology,

21 I had the question, because looking back over to

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1 and jumping back over to Compliance, looking at
2 romanette (ii), "LEA may determine the
3 methodology," and I guess this is my question.
4 "LEA may determine the methodology," and then
5 jumping down to (a) where there is a proposed
6 methodology, but then I'm looking over at the
7 statute, 1177, number (4), and there is a
8 prohibition as far as "limited session can be
9 constructed to authorize or permit," you know, it
10 says, "prescribe a specific methodology".
11 So I guess I'm stuck questioning the
12 how and why of the methodology and also looking at
13 the provision under Exceptions. I think maybe
14 under Exceptions it may get to possibly some of
15 the innovation in things that are mentioned
16 earlier, so...
17 MS. PODZIBA: Thank you.
18 MR. AMERIKANER: I'm sorry, are you
19 looking for a response?
20 MR. PARKER: Yes, a response to the
21 question.

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1 MR. AMERIKANER: Do you want me to
2 wait --
3 MS. PODZIBA: Sure, there's a question.
4 Go ahead.
5 MR. AMERIKANER: So I think, the one
6 thing I would say, just to answer your question
7 is, you said that as in paragraph (a) that we're
8 talking about -- and you said it was a proposed
9 methodology, and I would actually say that that is
10 certainly not the intent of the language. It's in
11 fact just so a district could adopt any
12 methodology it wants so long as the methodology
13 ultimately results in the school spending.
14 For instance if you could see the
15 difference between choosing to allocate via ways
16 through the funding system, or through traditional
17 staffing, you know, one teacher per X, as long as
18 ultimately -- unless they refuse to do it -- it
19 results in the district spending an amount of
20 state and local funds for people.
21 So, that would be my answer.

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1 MS. PODZIBA: Does that answer your
2 concern, Eric?
3 MR. PARKER: Slightly, but, yeah, I'm
4 ok with it.
5 MS. PODZIBA: Thomas?
6 MR. AHART: Yeah, we know that the
7 supplement vs. supplant issue has been a challenge
8 probably since the inception of Title I. We know
9 we waited a long time for ESSA to be reauthorized
10 and Congress spent a considerable amount of time
11 debating some of these core issues.
12 Ultimately Congress negotiated a
13 compromise that says the law includes no changes
14 for districts in terms of comparability and
15 compliance and no fiscal test based on per-people
16 spending amounts by schools, but districts would
17 be required to publicly report their per-people
18 spending amount by school.
19 When you take that with the second
20 point I'd like to make, it says the law does not
21 require districts to use a specific methodology

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1 for distributing state and local funds, but
2 Congress authorized a new pilot program granting
3 districts flexibility if they allocated their
4 state and local funds according to a specific
5 methodology.
6 That combined with the public
7 reporting, while nobody thinks this is perfect,
8 Congress has answered some questions that I feel
9 like were reopened in this argument.
10 MS. PODZIBA: Does that lead to a
11 proposal?
12 MR. AHART: Well, I think it's -- what
13 I'm suggestion is that there's at best
14 contradictory language to what Congress has all
15 ready decided for us in some of the proposed rules
16 that I think we've not gotten to.
17 I think the last response, which I
18 appreciate, is a false choice: You can do anything
19 you want, as long as you do this. And I don't
20 think from a pure logic perspective that that --
21 that doesn't make sense to me. Perhaps I may not

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1 just be smart enough to follow it.

2 MS. PODZIBA: Ok. Liz.

3 MS. KING: Yeah, I think the challenge

4 here is that the word "methodology" is used twice,

5 and I think that's what's tripping us up. But the

6 end of the sentence in the prohibition in the law

7 is something about "may not prescribe the

8 methodology an LEA uses to allocate state and

9 local funds," which is different, and maybe we

10 just need another different word from the -- there

11 is no prohibition on the Department having a test

12 or a methodology for demonstrating compliance, and

13 I would remind folks that, unless there is a way

14 of demonstrating compliance, then you are

15 noncompliant. So people need a way of

16 demonstrating compliance. I think that is

17 definitely in all of our interests.

18 MR. EVERS: No argument there.

19 MS. KING: Yeah, and I think also it's

20 in all of our interests that that methodology be

21 clear and be understandable and we all have a

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1 common understanding of what that is. So I just
2 wanted to add that.
3 Also, there is no prohibition on using
4 this test, right? Like Congress prohibited the
5 old test. They did not prohibit this test. And
6 the old test is that you have to demonstrate that
7 an individual service is supplemental. So they
8 didn't prohibit this one. They didn't require
9 this one. They didn't prohibit this one. They
10 just said, You can't use the old test. You must
11 comply with the requirement.
12 I'd remind folks that this is not
13 waivable either. That's how much Congress meant
14 it, is they did not allow for the waiving of the
15 Supplement Not Supplant requirement.
16 MR. AHART: Nobody wants to do that.
17 MS. KING: No, no. I'm sorry. Sorry,
18 sorry.
19 MR. AHART: I made a suggestion this
20 morning that I don't think it merits it.
21 MS. KING: No, and that's fair. I

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1 appreciate you're calling that out. I didn't mean
2 at all to suggest that that's what you're asking
3 for.
4 I'm just using that as evidence of how
5 serious they are about preserving it, they're
6 serious about having a meaningful demonstration of
7 compliance. I think that's where we need to get
8 on that.
9
10 MS. PODZIBA: Janel.
11 MS. GEORGE: I know that everyone is
12 tired of my history lessons, but I just wanted to
13 add one quick thing.
14 Supplement Not Supplant has not been
15 around since the inception of the Elementary and
16 Secondary Education Act of 1995. The Legal
17 Defense Fund and the Washington Research Council
18 actually issued a report showing abuses of Title I
19 funding.
20 So Supplement Not Supplant came around
21 in 1969, a 1970 guidance to insure compliance and

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1 the proper use of and integrity of Title I funds.
2 So I just wanted to underscore that,
3 again, not to give a history lesson.
4 I just wanted to add, you know, Thomas,
5 in terms of the methodology you said, You can do
6 anything you want so long as you do this... I
7 think I would rephrase that to say, You can do
8 anything you want, so long as this results in X, Y
9 and Z that's laid out.
10 So maybe I'm just interpreting it
11 differently. I don't see that specific outline of
12 what the methodology should be. I see what it
13 should result in, which is how we can really
14 measure compliance.
15 And just to Eric's point of adding
16 innovation or adding a romanette under the
17 Exceptions, my only exception with that is, if we
18 get into adding that, how do we define what's
19 innovative?
20 So that's my concern if we continue to
21 add these other exceptions; how do we define that?

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1 How do we still have clarity on that? What's
2 innovative in one place might not be considered
3 innovative in another.
4 MS. PODZIBA: I would like to ask
5 people, because we spent most of our time on
6 Compliance in paragraphs (i) and (ii), so I just
7 want to give a minute -- and Aaron, sorry, I'll
8 get to you in just a second. I'll get Aaron's
9 comment. And then I just want to see if there are
10 any comments on paragraph (a), because again my
11 goal is to isolate what it is that we need to
12 focus our work on.
13 Aaron?
14 MR. PAYMENT: So mine is kind of a
15 methodology question. So when we reference in
16 (B)(i) romanette and then (a), if I got that
17 right, we reference "average," and there seems to
18 be some consternation with the word "average".
19 So "average" denotes in statistics the
20 mean, the median or the mode. Would the mode have
21 been preferable?

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1 MS. PODZIBA: You may need to describe
2 that.
3 MR. PAYMENT: So, average, sometimes
4 the mean is the mathematical average, all of them
5 divided by the number; mode is the most frequently
6 occurring; and then the median is, if they're all
7 lined up, it's the one rate in the middle.
8 So if we're concerned about either
9 understating or overstating, the mode probably is
10 the most reflective because it's the most used.
11 So would that help?
12 MS. PODZIBA: So for those with concern
13 about "average," does using the mode, the most
14 frequently occurring fit?
15 MS. JACKSON: I would imagine, this is
16 right in line with fifth grade math. I saw the
17 median as like in between two rows, and mode
18 rhymes with moose -- or not rhymes, the letters.
19 And now I'm way off track.
20 I don't think that we would be able to
21 be prescriptive I don't think on which method of

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1 averaging, but I think that's actually a place
2 where states or LEAs could have some flexibility
3 in justifying which one they chose and why.
4 So if there were this weighted student
5 funding and you have one school that's very high
6 need that's heavily weighted, maybe in that case
7 the school justified their use.
8 I don't know if's an art for you to
9 pick which average.
10 MR. PAYMENT: It could be Guidance.
11 MS. JACKSON: That is an important
12 point that like, for exceptional situations or
13 dynamics, mathematically, that's why there's a
14 range of ways to calculate the average.
15 MS. PODZIBA: So for statistics
16 people -- and now I'm never going to forget what
17 mode is, because you gave me a great way of
18 remembering.
19 MS. RICKER: That's right.
20 MS. PODZIBA: But is there a way to
21 say, based on Audrey's comment, that there should

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1 be flexibility? Is there a way to say
2 "statistically significant to use a
3 methodology" -- no, that won't work?
4 MS. JACKSON: That doesn't go with --
5 MS. PODZIBA: Great. I did statistics
6 a long time ago in graduate school.
7 MR. PAYMENT: I would conceive -- so I
8 only offered up the mode, because I've heard
9 concern about the word "average," but if we don't
10 define it, I think it may default.
11 It's probably going to default in the
12 terms of the Department to the mean, which is the
13 mathematical average, adding them all up.
14 So if there's consternation -- I'm
15 trying to find us some middle ground.
16 MS. PODZIBA: Right, I understand.
17 MR. PAYMENT: And the mode really is
18 the most reflective because it's the most used.
19 So if we don't define it, it will
20 default -- I think it's going to default to the
21 mathematical average, which people take exception

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1 to, I think are taking exception to, if I'm
2 reading it right.
3 MS. PODZIBA: Alvin?
4 MR. WILBANKS: I would just say that
5 the Department is the one to ask what they mean by
6 "average". I'll willing to -- I think I know what
7 average is, and I believe I've got to be somewhere
8 in the ballpark there, but I believe they're the
9 ones that are going to define it, not us.
10 MR. PAYMENT: It's one standard
11 deviation.
12 MS. PODZIBA: I want to check in with
13 everyone. Are there any questions about paragraph
14 (a)? I know that that's essentially statutory.
15 But are there any comments or questions on that?
16 How about on transition timeline? Is
17 there any discussion to be had on paragraph (4)?
18 I think I've heard some people saying that they
19 appreciate that.
20 Ok, thank you. So that just helps me
21 in sort of keeping track of what we need to keep

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1 working on.

2 So I'm hearing all sorts of things.

3 I'm hearing concern about certain phrases; I'm

4 also hearing concern about both sections, and I'm

5 wondering, Ary, is there something that might be

6 helpful for you to hear a more focused discussion

7 on, and again if we can kind of try to jointly

8 problem solve an issue that's been raised

9 repeatedly?

10 MR. AMERIKANER: So I think, Susan, I

11 actually really agree with you that it would be

12 helpful to spend a little more time on -- I think

13 there are two things that it would be helpful to

14 spend a little more time on. One is if we have

15 specific ideas about how to make the basic

16 education program more specific and clearer for

17 all of our purposes. Because I know everybody is

18 concerned about that. And that may be a sign we

19 need to go back and have some time over lunch to

20 all brainstorm on that and then come back on.

21 The other one is -- I do want to talk a

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1 little more about this "average" phrase, because I
2 know Alvin has asked a couple of times about that.
3 I don't mean to be dodging the question.
4 So, no. Your question was does the law
5 require average. Right, Alvin? That was your
6 question?
7 MR. WILBANKS: Yes.
8 MR. AMERIKANER: So, no, the law does
9 not require average. The law requires all funds.
10 And so we are trying to put a little clarity
11 around what that means to not leave it in the
12 hands of auditors.
13 And so to Aaron's point, I think if
14 there was a different idea about that, one of the
15 things we thought of and rejected, left on the
16 drawing board, to say that every Title I school
17 had to get at least as much as all -- like the
18 most well-funded, non-Title I school, right?
19 Because in some way you can interpret all funds to
20 mean that that felt like there might be some
21 special circumstance where a non-Title I school is

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1 getting a whole bunch of money, like for instance
2 they have a lot of students with disabilities
3 under a weighted student funding system. So we
4 didn't think it quite made sense to whether they
5 actually went for average of the non-Title I
6 schools, just as a way to provide some
7 concreteness.
8 But absolutely, if median seems to
9 make -- I mean, I'm not sure of a median in this
10 case, because I'm not sure that any particular
11 dollar amount would ever be repeated. But in --
12 MS. JACKSON: That's mode.
13 MR. AMERIKANER: I meant mode, sorry.
14 Thank you, Audrey.
15 I don't know that mode would make any
16 sense with that point. But median might make
17 sense to avoid the problem of a particular school
18 really pulling the mean up. We're open to other
19 ideas there.
20 So, to answer your question, Susan, if
21 people have specific language suggestion changes

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1 for that paragraph (a) that would address this
2 problem that we've heard from a couple of folks
3 about whether their particular district's type of
4 funding methodology is allowable, that would be
5 great.
6 MS. PODZIBA: Aaron.
7 MR. PAYMENT: I just wanted to say the
8 median is not subject to cases that can bring it
9 up. The average is.
10 MR. AMERIKANER: I know. I wanted to
11 say, we want to go median.
12 MR. PAYMENT: No, the average is
13 affected, but mode is not. Mode is the most
14 frequently occurring.
15 MR. AMERIKANER: Right.
16 MS. JACKSON: Mode is a little tricky
17 because it can be such a specific amount for a
18 child or how you calculate which amount that you
19 may not have that. But the mode could actually
20 come from -- you know, you could have kids one
21 percent off or a tenth of a percent off. And so

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1 then the mode may actually be the most frequently
2 occurring for kids who have a very extreme
3 situation. Mode doesn't necessarily work if
4 there's a lot of variability in the program.
5 MR. PAYMENT: One standard of
6 deviation.
7 MS. PODZIBA: Go for three and you'll
8 lose all of them.
9 So I appreciate the request for actual
10 ways to fix. I don't know that anybody actually
11 has an actual way to fix, so I'm wondering if we
12 can have a discussion about possible ways -- do
13 you want to caucus?
14 MS. GEORGE: I'm sorry, Liz, I would
15 like to caucus.
16 MS. PODZIBA: You'd like to break for a
17 caucus?
18 MS. GEORGE: Yeah.
19 MR. AMERIKANER: How much time do you
20 think you would like for that.
21 MS. KING: We can caucus.

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1 MS. GEORGE: Five or ten minutes,
2 fifteen minutes. I don't know. I would like to
3 caucus.
4 MS. PODZIBA: Ok, who would you like to
5 caucus with.
6 MS. GEORGE: Whoever -- Rita. Whoever
7 would like to discuss this.
8 MS. JACKSON: Wait, on what?
9 MS. GEORGE: On the definitions -- on
10 this issue we're discussing, the average.
11 MS. PODZIBA: Ok, let's see. Could I
12 ask you to do it this way. Just hold off. It's
13 not too far from lunch. If we can see if we can
14 get some discussion going, then maybe we can do
15 that as a group and maybe you can caucus over
16 lunch.
17 MS. GEORGE: Ok.
18 MS. PODZIBA: Thomas?
19 MR. AHART: I have a clarifying
20 question. When you are talking about the
21 resources, what all would you expect to be

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1 included in that besides personnel? I mean,
2 there's some general language in the statute, but
3 how granular does that go?
4 MR. AMERIKANER: How granular?
5 MR. AHART: How granular, yes? What
6 all did it include?
7 MR. AMERIKANER: So that provision, the
8 reporting provision is not one that we are sort of
9 negotiating here. But I can tell you just my sort
10 of understanding of how that's worked in other
11 similar data collections. Is that helpful?
12 MR. AHART: Yes.
13 MR. AMERIKANER: In general, it
14 includes things like personnel expenditures, so
15 salary and benefits as well as things like costs
16 for instructional programs of other types, right,
17 sort of that stuff, the computers and the other
18 kinds of things.
19 It tends to exclude, so to not include,
20 things like capital costs, capital outlays and
21 debt service, that type of thing.

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1 So in general those kind of data
2 collections try to keep it at the actual sort of
3 instructional, the educational services, and not
4 on the stuff that we know over time a district has
5 to spend money on building at different times,
6 stuff like that.
7 MR. AHART: Thank you.
8 MS. PODZIBA: Tony?
9 MR. EVERS: And this has been alluded
10 to a couple times, but a year ago the Department
11 came out with Guidance around Supplement Not
12 Supplant as it relates to school wide programs,
13 and that I guess has worked.
14 Do you believe that what you have here
15 now is the same as what you were talking about a
16 year ago, or different? How is it different and
17 why is it different?
18 MR. AMERIKANER: So it's a bit
19 different, and it's a bit different because the
20 law has changed since that Guidance came out. So
21 the law itself has changed the requirements. And

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1 we heard quite a bit of -- we heard some requests
2 in our public commentary for clarity around this,
3 and I'm also inquiring what that meant and to make
4 sure that we had clarity around how you comply.
5 And so that's why we have changed it a
6 bit. We're trying to make it clearer through this
7 process.
8 MS. PODZIBA: Liz?
9 MS. KING: Yeah, so I wanted to just
10 read the reporting reference -- the reporting
11 requirement that's referenced. So it says -- and
12 this is again only required to be reported, "the
13 per-people expenditures of federal, state and
14 local funds, including actual personnel
15 expenditures and actual non-personnel expenditures
16 of federal, state and local funds disaggregated by
17 sorts of funds for each local educational agency
18 and each school in the state for the preceding
19 fiscal year".
20 So that's from the -- we had that ink
21 in our packet last go 'round.

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1 MS. JACKSON: We have it here to.
2 MR. AHART: I read that. I was
3 wondering what their interpretation is.
4 MS. KING: Oh, thanks, Thomas.
5 Also, I think the 2015 language that
6 keeps getting referred to as "not Guidance," I
7 think it's like "helpful hints," but I don't know
8 that that distinct -- "helpful hints," I shouldn't
9 say that. That's not a legal term. But, yeah,
10 we've had a new law since then, and... yeah.
11 MR. AMERIKANER: It might be helpful in
12 the second -- I mean, we do consider it Guidance,
13 non-regulatory Guidance. So even though it comes
14 out in a slightly different format.
15 We're always trying to innovate the
16 Department in trying to come up with more helpful,
17 user-friendly ways to write that.
18 MS. PODZIBA: I've got Richard and then
19 back to you Tony.
20 Richard.
21 MR. POHLMAN: Thanks, sure.

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1 I'm going to try to parse out back to
2 this question of average, if you will indulge me
3 for a minute, in that I think that, one, I don't
4 think average is unclear. It's something that we
5 use in fiscal terms all the time, in all of our
6 work with our accountants, our financiers, our
7 auditors, et. cetera.
8 I would also say that narrowing it to
9 one of the three methods to calculate average, I
10 think it narrows options for schools -- or for
11 districts and states.
12 The third piece that I would add in
13 there is that it seems to -- and again, this is my
14 interpretation, and I would just put it out there
15 for clarity piece -- it seems to somehow
16 contradict with the exception that was noted
17 earlier in three -- romanette (iii)(b), and this
18 is statutory, right, is that those supplemental
19 state or local funds expended, like, it includes
20 more than just the average.
21 So I think that the intent behind that

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1 is to include as much as you can within that, that
2 it's justifiable under the audit guidelines to
3 come up with something that makes sense on an
4 individual district-level basis, and so I think
5 that was -- that part of the goal I read here, I
6 don't think it conflicts with anything anybody has
7 actually said. I think it just goes to saying
8 like, I'm not sure that -- while average would be
9 a point of -- a sticking point for Aaron, I don't
10 think that -- I think that maybe even more than
11 that would be per-pupil, for instance, or there
12 may be some other components of that language, and
13 it may be even reading it all together that's
14 striking people, not a single word, and by
15 changing the word I think we would go against
16 Congressional intent to allow the maximum
17 flexibility to determine those things.
18 MS. PODZIBA: Tony?
19 MR. EVERS: Not to be picky, but, yes,
20 this is a new law, which the Supplement Not
21 Supplant "helpful hints" a year ago applied to

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1 schoolwide programs, and that, to my knowledge,
2 hasn't changed dramatically in the law.
3 MS. PODZIBA: Ok, it sounds like there
4 may be disagreement about what the status of past
5 Guidance has been.
6 Ary, can you help?
7 MR. AMERIKANER: I know you were saying
8 that back to me.
9 I mean, I think that there are actual
10 changes in the law within what's the Supplement
11 Not Supplant requirement on the page now from what
12 there used to be in the schoolwide program.
13 And you're right, Tony. It is similar.
14 It is definitely similar. I don't mean to
15 discount that. Of course it is similar.
16 But at this point the test is different
17 in a couple of I think important ways. So one of
18 those ways is that it has a requirement that a
19 district demonstrate somehow that its methodology
20 insures -- like these are new words, and this
21 focus on methodology and a new focus on that, and

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1 insuring that every Title I school gets all of the
2 state and local funds it would have gotten
3 otherwise if it were a non-Title I school. Like
4 those are strengthening words, and now the test
5 applies to all Title I schools, not just the
6 schoolwide programs.
7 So, because it now applies to a lot
8 more schools, we thought it was particularly
9 important to go through this process to try to
10 clarify so that districts and auditors and states
11 know exactly what it means.
12 So it is similar, you're right. And I
13 certainly don't mean to undermine that point, but
14 it is also strengthening and applies to a lot more
15 to schools. So we thought it was important to go
16 through this process.
17 MS. PODZIBA: Mary Cathryn?
18 MS. RICKER: Thank you.
19 So in looking at (a) all together,
20 beyond even just the word "average," I am
21 wondering what is the purpose or what are you

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1 getting at with (a) going beyond these new
2 reporting requirements from Congress, which are
3 fairly significant and kind of exciting, from my
4 point of view?
5 MR. AMERIKANER: I think the purpose is
6 to try to give clarity to districts about how to
7 meet the Supplement Not Supplant requirement. So
8 we would definitely be open if people have other
9 ideas.
10 I think we are trying to be as clear as
11 possible about how you demonstrate, as the law
12 requires, at a district level and how that
13 district would demonstrate that every Title I
14 school is getting all of the state and local funds
15 it would otherwise receive.
16 This seemed to be the clearest, most
17 straight forward kind of dry way, is to use these
18 dollars that are already going to have to be
19 reported. And also it has the benefit of being
20 clear and quantifiable and also gets at what we
21 think the underlying purpose of the Title I

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1 Supplement Not Supplant requirement is.

2 But truly, if other people have

3 suggestions about a better way to do that, we

4 would love to hear that.

5 MS. RICKER: Can I just follow up

6 quickly?

7 MS. PODZIBA: Sure.

8 MS. RICKER: So sort of like the new

9 sun that shines on this reporting can be a really

10 powerful tool for me at the bargaining table as I

11 negotiate for what I believe we, as a community,

12 believe are the schools our children deserve, and

13 I see our community organizations having that same

14 opportunity.

15 And so, if there is a bit of sort of a

16 standardized requirement at the federal level that

17 actually -- that actually keeps it from being the

18 powerful tool I think it can be, and I feel that

19 the reporting itself has not demonstrated its

20 potency yet. And so I feel like we are

21 prescribing a remedy for something I don't see has

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1 exposed itself as an issue yet.

2 MS. PODZIBA: Alvin?

3 MR. WILBANKS: I want to follow up with

4 something Tony said, really a question.

5 The 2015 version of Compliance mentions

6 that schools could demonstrate compliance based on

7 allocation methodology, not spending, and there's

8 a big difference.

9 So, I guess the question I think to

10 ask, and I'm not assuming this is your question,

11 Tony, but why couldn't we not just use that -- and

12 maybe that was your point as well. Why isn't that

13 a good approach to demonstrate compliance?

14 And again, I don't think any of us are

15 against the Supplement Not Supplant principal, but

16 it's how you go about operationalizing that.

17 Whenever you have people retire every year in the

18 school, you have redistricting that occurs, staff

19 assigned to schools.

20 So, if it's on the allocation

21 methodology, I don't know. I don't speak to that

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1 point. But I think that might be a point that we
2 could agree to, but not necessarily on what seems
3 to be now the expenditure side. And particularly
4 in areas of eighty-eighty percent of -- I can't
5 speak for every school district, but for most
6 school districts the personnel and benefits costs
7 range between about eighty-six and eighty-nine
8 percent of the budget. So, when you lump in
9 utilities and a few other things, there is no
10 discretion at this point, or if so, it's very
11 small.
12 So I think that is a good way of
13 getting that in, and it's not -- we just now --
14 it's sort of like a form. Now that we've learned
15 to use the form, it changes again. So we sort of
16 know how to do the other.
17 We might like to address that as a good
18 compromise.
19 MS. PODZIBA: So, Alvin, does that also
20 get to Mary Cathryn's point, that that also gives
21 the reporting element a chance to be tested?

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1 MS. RICKER: Prove itself.

2 MS. PODZIBA: Prove itself.

3 MR. WILBANKS: Yes.

4 MS. PODZIBA: Ok.

5 Aaron?

6 MR. PAYMENT: So, I'm good with

7 "average" and it's listed here, because again I

8 think it will default to a mathematical average,

9 which is the mean. So really doing this

10 appropriately and allowing for maximum flexibility

11 to the state might be to say something like

12 "average or other appropriate statistic," and

13 allow the states to define that". And it could

14 be -- really it would be some other measure of

15 central tendency, standard deviation or something,

16 because there are different variances that the

17 mathematical average is not going to be reflected,

18 but I do like the concept of having something to

19 compare against.

20 So a proposal, if somebody else wants

21 to make it, because I don't feel that strongly

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1 about it, is "average or other appropriate
2 statistic," and then you leave it to the states to
3 define what that means.
4 MS. PODZIBA: Ok, could we keep that up
5 there and see? Because it feels like there's some
6 elements of a new proposal coming up and that may
7 fit within it.
8 MS. PODZIBA: Tony?
9 MR. EVERS: Oh, I'm sorry.
10 MS. PODZIBA: Ok, Rita.
11 MS. AHRENS: I just wanted to comment
12 on Alvin's proposal, which is a suggestion of
13 using allocation. Because I would need some
14 clarity or I guess more knowledge about what is
15 the typical discrepancy between allocation and
16 spending. Because I know that sometimes we make
17 plans, but the money doesn't necessarily get
18 spent, and if it's a small discrepancy, you know,
19 and there's a little bit of leeway -- I mean,
20 there's mathematical ways to calculate this,
21 right, whether you're within five percent of your

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1 allocation in terms of your spending--

2 MR. WILBANKS: Can I answer that

3 question?

4 MS. PODZIBA: Yeah, as soon as she

5 finishes asking it.

6 MS. AHRENS: Yeah, because I think the

7 problem is, if there's a huge discrepancy, then it

8 just causes an equity issue that that's covered up

9 by using allocation assessment.

10 MR. WILBANKS: Well, I guess that

11 depends on how you define "discrepancy," but let

12 me give you the most common one...

13 You had a teacher who taught

14 thirty-three years, had a doctorate, a salary of a

15 hundred thousand dollars. She gets replaced with

16 someone that has been teaching three years, has a

17 Master's degree. So, that salary line goes from a

18 hundred thousand to whatever it is. Let's just

19 say it's sixty thousand.

20 MS. RICKER: Right.

21 MR. WILBANKS: But you're still

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1 allocating -- your methodology allows you to
2 allocate a staff person at that school. So that's
3 the difference between allocation and expenditure,
4 and that's just for that one teacher. When you
5 consume that as a whole...
6 Again, personnel and benefits is a huge
7 part of any district's budget. I would dare say,
8 I've never known anybody to get less than
9 eighty-six, but it generally runs between
10 eighty-seven to eighty-nine percent. Our current
11 budget is eighty-eight percent of our total
12 budget.
13 MR. AHART: Can I just add one other
14 brief example that's relevant to that?
15 MS. PODZIBA: Yes.
16 MR. AHART: So, on the other end, I can
17 have two teachers with identical education,
18 identical years of experience, and because in our
19 master contact the district covers the cost of
20 full benefits, if I have a teacher that's taking
21 full family insurance and another one with the

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1 exact same assignment is only taking SEMBLE (phon)
2 insurance, that one teacher will cost an
3 additional twelve thousand dollars.
4 So how our allocation formula works is
5 we have a weighted formula where you get weighted
6 more heavily, but we don't do it in terms of
7 dollars; we do it in terms of staff, because we
8 also want to encourage our schools to hire the
9 best talent they can.
10 So if I'm allocated twenty-five staff
11 members and I have, let's say, five hires to
12 make... I don't have to worry about hiring a brand
13 new teacher because that's all I can afford. I
14 know I have a fully-compensated FTE.
15 So if I find that the best candidate
16 has twenty years experience, a Master's degree, is
17 highly effective and is going to take full family
18 insurance, I have no disincentive to not hire that
19 person, if that's the best person for the job.
20 But what that does in terms of the
21 actual dollars spent on staff, building to

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1 building, it's not correlated with the level of
2 services that we're providing the kids.
3 Like Alvin said, way over eighty
4 percent of our total budget is spent on personnel.
5 And there is a lot of variance for which we have
6 very little control. As governed by the master
7 contract, measuring the dollars spent on staff per
8 student is not a way to measure the level of
9 quality service. But the number of FTEs that
10 we're citing is a much better way to do that.
11 MS. AHRENS: Can I just ask a follow-up
12 question?
13 MS. PODZIBA: Sure.
14 MS. AHRENS: Alvin, in your example,
15 what happens to that leftover money if that
16 retired person leaves and you're hiring in a new
17 person?
18 So you have something that's allocated
19 for personnel. Does it still go to personnel --
20 MR. WILBANKS: It goes into the
21 "Superintendent Slush Fund".

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1 (Laughter from the committee.)

2 MS. AHRENS: Wouldn't you still spend

3 it on personnel if it's allocated?

4 MR. WILBANKS: Well, obviously there is

5 such a thing -- you know, we have a budget, and

6 for those of us that live and die by budgets, if

7 your expenditures are running less than your

8 revenue, you're in good shape, ok.

9 And then at the end of the year we have

10 this thing that we call carryover, or whatever,

11 but you may have, in the next district, you may

12 have a first-year teacher that decides they're

13 going to leave, and then you hire somebody with a

14 doctorate. It could just be the reverse of that.

15 But from the district level, your personnel budget

16 is still, you know, paying for whatever your

17 staffing methodology is.

18 MS. PODZIBA: Thank you.

19 Liz?

20 MS. KING: Yeah, I wanted to just thank

21 Mary Cathryn for highlighting the value of the

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1 reporting on per-people expenditures. We're very
2 excited about that. That is a different and
3 separate requirement elsewhere in the law.
4 I think we want to make sure in ways
5 that that's standardized. That is just a very
6 different conversation, although obviously related
7 because it's referenced here in the Regulations.
8 Again, I will say this idea of having
9 auditors sort of discern motive behind multiple
10 methodologies and Alvin's "slush fund" that he's
11 identified, the discerning -- the intent around a
12 methodology, I'm not comfortable with that level
13 of discretion for auditors.
14 In the example, Thomas, that you just
15 gave, that does not allow for school-based
16 budgeting, if a district does not allocate FTEs
17 but instead allocates -- gives discretion at the
18 school level that would determine staffing that's
19 not allowed under this.
20 Just to remind everybody that this is
21 about supplemental funds, not supplemental

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1 services. So that would be, you know, a test that
2 was based on services and that was looking at, Did
3 you have a districtwide salary schedule, and Did
4 you have a districtwide class size and a method
5 for allocating instructional resources, which
6 would be a different test than that which was
7 required under here.
8 Also, there's a distinction, to -- Rita
9 I think raised a very excellent point. This again
10 does not say, Did you plan to use these funds
11 supplementally, but, Did you in fact use them
12 supplementally. So that is I think an important
13 distinction that Rita just made. If you planned
14 to use them supplementally and then didn't end up
15 using them, I'm not sure how that's compliant.
16 Again, I'm still not sure, for any LEA
17 that is not compliant with (A), why are they not
18 supplanting. That's what I'm having a hard time
19 with. They may need to demonstrate more in order
20 to be not supplanting. They may also need to
21 demonstrate (B). But if you fail to demonstrate

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1 under (A), that's what I'd like some greater
2 clarity on, especially if we're going to talk
3 about changing (A), how, presumably because
4 there's a scenario in which you could fail (A) and
5 still not be supplanting. So I'd like to hear
6 more about that.
7 MS. PODZIBA: Are you directing your
8 question to someone, or is it a general question
9 to the group?
10 MS. KING: Both. I mean, I said both
11 Alvin and Thomas' names, so as far as I'm
12 concerned, they get to respond, but I'm also
13 interested in the whole group.
14 MS. PODZIBA: Ok. I don't want to have
15 it that way. I'm going to go through the whole
16 room, and if Alvin or Thomas want to respond, they
17 can put up their cards to do so.
18 Audrey?
19 MS. JACKSON: I just want to speak a
20 little bit to the comments that have been made
21 about the expenditures at the school level.

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1 One thing that's happened, or one that
2 I have seen happen personally in really high-need
3 schools is that, a solution, when there are fiscal
4 constraints, are to have -- to utilize almost sort
5 of loopholes with multiple certifications, to have
6 people serving different roles.
7 So for example I'm a triple-certified
8 teacher -- I don't know if that would count in
9 other states -- in special education, elementary
10 education and for English-language learners, SCI.
11 The issue is that, on paper, people would say --
12 and this happens to teachers all the time -- in an
13 inclusion classroom, or any classroom that that
14 teacher would have more than one certification, he
15 or she delivers all of those services. And this
16 is what happens a lot in schools when there are
17 fiscal constraints, and particularly in schools
18 that are in high-poverty schools.
19 And so, even as I was Massachusetts
20 State Teacher of the Year, and in my first years
21 of teaching, I thought I was good, but I have

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1 definitely gotten better. But I can tell you
2 right now, if my district did not have such a
3 competitive pay scale and proper supports in my
4 school, I would not be able to stay there. I
5 would have burned out.
6 And because there are, I wouldn't say
7 necessarily ample or sufficient resources, but
8 there are adequate resources, and we are treated
9 like professionals there, that's one of the
10 reasons that I'm able to stay in the classroom.
11 And so I think that -- I guess I'm just
12 cautionary. I totally get what you, Thomas and
13 Alvin, are trying to bring up, but I think that
14 these funds are for the kids who are most in need.
15 These are not like pity funds. These are not, you
16 know, you need it just a dose for it to be nice.
17 That's because there is a greater need, and
18 what -- no, sorry. You did not say they were pity
19 funds. I'm not saying you said that.
20 But I'm speaking to the need for
21 increased services and that often really does

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1 correlate to higher costs, if done well.

2 MS. PODZIBA: Ron.

3 MR. HAGER: I had a question about --

4 you had earlier said that (A) was from the

5 statute, but as I compare it with (B), I think

6 this is the problem. Is (B)(1) also from the

7 statute? It looks like it is.

8 Because you were talking about how the

9 statute now requires that they demonstrate that

10 the methodology to allocate "all" and the word

11 "funds," that's all from the statute, right? Is

12 that what you're coming up with?

13 MR. AMERIKANER: This is why it's tough

14 to try to do these things in color code.

15 MR. HAGER: Yes.

16 MR. AMERIKANER: So some sections of

17 what you're talking about, Ron, is Compliance

18 (F)(b)(1) romanette (i), so some of these words

19 are taken right from the statute and some of them

20 aren't. So I don't think it's fair for me to sit

21 here and say that that entire paragraph is

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1 straight from the statute, but we were trying to
2 make it clearer how to actually implement it.
3 So it's a little tough to answer.
4 Let's put it that way.
5 MS. PODZIBA: Alvin?
6 MR. WILBANKS: I was just going to
7 clarify again, when you consider state and local
8 funds, in a district it's not uncommon for one
9 school to -- maybe the PTA to purchase a computer
10 lab. To make all that legal and everything, the
11 PTA raises the money, they give that to the
12 school, and the school buys that.
13 It's also not uncommon for districts,
14 that other students in the district could not do
15 that.
16 So, you know, how do you deal with
17 that? And I think that points to the part of the
18 metrics here that this is still America and that
19 there's differences of whatever.
20 The initial intent of Supplement Not
21 Supplant is that you look at all of these schools,

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1 and then you look at the Title I schools. Are
2 they getting the use of the Title I money, not the
3 other schools?
4 And I think that's the basic intent of
5 it. And I live and die with that every day and
6 certainly agree with that, and I want to make
7 surer that whatever we do here today doesn't take
8 away from that.
9 But to make it more difficult, make it
10 harder, I'm obviously opposed to that.
11 MS. PODZIBA: Thomas.
12 MR. AHART: Liz, to your point about
13 there are different methods that districts use to
14 distribute resources, and so I wasn't trying to
15 say that (A) -- I wasn't trying to suggest any
16 test for (A).
17 What I am trying to advocate for is
18 that there is some degree of flexibility so a
19 district can make the best use of its resources
20 within its own context and still equitably serve
21 the students we're charged with providing supports

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1 for.

2 I would also like to request after

3 lunch that we could get a red-line version of what

4 is on here. Because I would also say, Liz, that

5 (A) is not a requirement in regulation. It's a

6 proposal from the Department.

7 MS. PODZIBA: Rita?

8 MS. AHRENS: All right, as we're

9 discussing, I think it's more helpful for us to

10 consider both (A) and (B) together as tests that

11 together will help come at the question of

12 compliance.

13 Because if you're doing -- if you're

14 just looking at the (A) test, I think that, you

15 know, you can come up with all sorts of reasons

16 why you might not like the (A) test, you know,

17 part (A), as opposed to, you know, look at part

18 (B) by itself where you might object because there

19 are exceptions that you can find.

20 But as a whole together, I think it is

21 actually quite reasonable in giving us the results

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1 of whether districts are compliant or not.

2 One of the things, I think, when I'm

3 thinking about the average, you know, I think the

4 use of the average in part (A) actually resolves

5 the issue of allocation and spending, or the issue

6 of some schools spending more on personnel than

7 others, and in a way I think it would actually

8 help incentivize some of those schools to bring in

9 the, you know, more experienced teachers, more

10 qualified, you know, more effective teachers to

11 kind of help out that average.

12 So I think it might be a good incentive

13 to equitably distribute teachers to those

14 high-need schools.

15 So I don't -- I like (A) and the use of

16 average for expenditures. I don't think you've

17 convinced me that allocation is appropriate in

18 this case, so I do support still using spending.

19 MS. PODZIBA: Tony?

20 MR. EVERS: So I know this won't be

21 helpful, but I just have to say it.

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1 We talk about what part of the law is
2 in here; I just want to talk about what part of
3 the law is not in here.
4 The law says "No local education agency
5 shall be required to identify that an individual
6 cost or service supported on this part is
7 supplemental".
8 It also indicates that "Nothing in this
9 section shall be construed to authorize or permit
10 the Secretary to prescribe the specific
11 methodology a local agency uses to allocate state
12 and local funds to each school receiving
13 assistance under this part".
14 So I think there is this conflict in
15 what the law says, what this says, and I'm not
16 against working it, but the bottom line is, this
17 is one part of the law that really isn't reflected
18 here.
19 MS. PODZIBA: Ary?
20 MR. AMERIKANER: So I just wanted to
21 mention that I agree with Tony that the part about

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1 the prohibition is not rewritten into the
2 regulation, but the first part he mentioned about
3 an LEA not being required under this section to
4 identify that an individual cost is in paragraph
5 (A), In General, Roman numeral II, and romanette
6 (i).
7 MR. EVERS: The prohibition law is not
8 in here.
9 MR. AMERIKANER: Right, is not written
10 in here.
11 MS. PODZIBA: Liz?
12 MS. KING: Yeah, to that, I will say
13 that it says in (B)(1)(ii) "An LEA may determine
14 the methodology it will use," right? So, it's not
15 saying, we do not prohibit you from -- or, We do
16 not require a specific methodology.
17 I mean, you could have that, right?
18 You could say that, The Department is not
19 requiring that an LEA use a specific methodology.
20 The LEA may determine the methodology it will use;
21 just as a way to resolve that, because I'm

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1 perfectly comfortable with that.

2 To the issue of flexibility, I think

3 it's important here to look in (A) specifically.

4 And I don't want to strike (B). I'm sorry if it

5 sounded like I was suggesting that. But in (A),

6 the only flexibility that is not allowed is that

7 you may not spend less in Title I schools.

8 To sort of come back to my, You could

9 only hire band teachers, point, there's lots of

10 reasons you shouldn't do that, and there are lots

11 of other laws that that violates.

12 The only flexibility that is not

13 allowed under (A) is the flexibility to spend less

14 money in Title I schools. So that's the only

15 thing that (A) disallows from a flexibility

16 perspective and from a district-discretion

17 perspective.

18 MS. PODZIBA: Derrick?

19 MR. CHAU: Ok, there's been a lot of

20 discussion about how are schools run and how

21 teachers are hired. And coming from a position

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1 where we are running schools and hiring teachers,
2 and having hired teachers myself and understanding
3 those methodologies, I'm just wondering if --
4 there's an assumption in our discussion that (A)
5 and (B) are necessary, because romanette (i) under
6 (B)(1) is not clear. And I'm wondering whether or
7 not we've agreed to that. Is what it says in
8 romanette (i), under (B) unclear?
9 A lot of the comments that I've heard
10 today have talked about hiring more teachers,
11 hiring more experienced teachers, allocating staff
12 and funding. Maybe it's just my ignorance in this
13 process, but I don't think the Congressional
14 intent behind this was to tell local districts how
15 to spend their money and how to allocate their
16 money. And if a local district has determined,
17 through it's elected school board, that the way it
18 funds its schools is in a certain way, they should
19 be able to demonstrate that in romanette (i) and
20 meet the requirement.
21 I'm just trying to get some clarity on

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1 what the feedback from others might be around
2 that.
3 You know, I'm representing LA Unified,
4 but I'm representing all the other districts in
5 this country who have very different budgeting
6 methodologies. And I'm fortunate, like Ryan, to
7 live in California where we are blessed with a
8 state funding formula that allocates funding in a
9 more equitable manner than most states.
10 However, our budgeting process is not
11 based on students. It's based on school-based
12 budgeting. And so we're allocated by that to use.
13 So we do have instances -- I don't have the exact
14 data with me right now -- but I could imagine that
15 we have schools where there are more experienced
16 teachers who are earning more money who, and in
17 those schools, it's very likely that that school's
18 per-people funding is going to be higher than in
19 other schools. That is a fact. And that was
20 determined by our school board as publically
21 elected.

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1 So, I'm wondering how, when we start
2 talking about results of a methodology, as Thomas
3 said earlier, I think it's sort of skirting the
4 issue that, we're not allowed to create a
5 methodology, but we can only choose the one
6 outcome.
7 I don't know. I have a nine-year-old
8 at home, and if I tell him, You can go to soccer
9 practice, but you have to do your homework,
10 there's one methodology there.
11 It's not that you get to choose. And I
12 worry that by forcing districts to meet this
13 outcome, we are basically telling them what
14 methodology they need to use in their schools.
15 I mean, yes, there's some flexibility
16 there, yes. It's a base level. But it seems like
17 a false choice and it goes beyond maybe what
18 Congressional intent was originally.
19 MS. PODZIBA: Lara?
20 MS. EVANGELISTA: I just want to --
21 from a school perspective, I think the most

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1 important thing that we do is have the autonomy to
2 hire our teachers and pick the teachers who are
3 best suited for our school, our model and our
4 students. But I think there's this -- it just
5 sounds like there's this ongoing assumption that
6 it's always the highest paid, most experienced
7 teachers that are always the best teachers. And
8 that's just not always the case. And I think we
9 spend a lot of time --
10 I mean, the fact that I have my staff,
11 that people aren't transferred in and out, and
12 that I can work with them over a period of time,
13 and my newer teachers can work with my existing
14 teachers and develop them, we do retain a lot of
15 staff. We don't have a lot of turnover.
16 But when we're hiring, we're not always
17 looking for the most experienced, highest paid
18 teachers, and I think that's just something to
19 consider.
20 MS. PODZIBA: Yeah, I just want to make
21 the observation that it sounds like the people who

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1 would be regulated under this are all choking a
2 bit on it. That's just an observation; that the
3 others who want a change, and I understand that,
4 are supporting it, but the ones who would have to
5 change their systems, I'm not hearing people feel
6 like they can do that.
7 Richard?
8 MR. POHLMAN: Yeah, going back to
9 something Ary said much earlier in coordination
10 with Derrick's comment --
11 (Technical difficulties.)
12 MR. AMERIKANER: It was working.
13 MR. POHLMAN: How about now? Can you
14 hear me now? Can you hear me?
15 The question I have is, you mentioned
16 some public comments earlier that you had
17 received, and like I am not extremely well-versed
18 in the exact language of the former test, but I've
19 been operating schoolwide programs, and this seems
20 really close to the old test for schoolwide
21 programs before. So lots of people have

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1 implemented this test previously.

2 What specific questions came up in the

3 responses from your open-comment period that said,

4 This is a specific problem we need to solve, and

5 how does that interrelate with romanette (ii) (A)

6 and (B)?

7 Because I think hearing more about that

8 could be helpful to just contextualize it from the

9 experiences from the field even beyond the state

10 level.

11 MS. PODZIBA: Ary?

12 MR. AMERIKANER: May I respond to this?

13 So I think there's two different

14 answers to your question, so I'll take them in

15 sort of categories.

16 One is we have heard over the past

17 however many years, not just the public

18 commentary, but over the past like ten years of

19 implementing the law, implementing the old

20 Supplement Not Supplant test, a lot of frustration

21 from districts specifically who are frustrated

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1 with the way the other -- remember under the old
2 law. I know you know this --
3 MR. POHLMAN: Yes.
4 MR. AMERIKANER: There were two
5 different kinds of Supplement Not Supplant
6 requirements, right? So one of them was very,
7 very specific about what kind of services you
8 could buy with your Title I dollars. And that was
9 frustrating to a whole lot of people. They wanted
10 to be able to use their Title 1 funds in various
11 ways, and they are told, no, no, no, no, no, by
12 auditors. And that felt burdensome.
13 We heard a lot that schoolwide
14 programs -- even though under the old law
15 schoolwide programs didn't have to use that
16 particular test, auditors were still making them
17 use that particular test, because they didn't
18 understand that they didn't have to.
19 So in one case, we heard a whole bunch
20 of, please make it very, very clear what the
21 actual requirements are so that auditors do not

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1 have this ability to push us around like this.

2 So one line of commenting is, Please

3 write something that is extremely clear and

4 specific so that auditors can't give

5 misinformation.

6 So that's one line of request. And

7 that I'm not going to point out the commentary.

8 I'm pointing to the last ten years.

9 The other kind of request that we got

10 for specifically the public commentary was a

11 request that we address the long-standing resource

12 and equity.

13 So, you're right. I think Alvin and

14 Thomas had been making the point that, in the

15 past, there were provisions that said, In the

16 schoolwide program you could use staff allocation

17 methodologies and that would meet the requirement.

18 And unfortunately -- and I actually think -- I

19 think Thomas especially is making a really fine

20 argument about the concern about not wanting to

21 have a disincentive to hire the right teacher in

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1 your school, and I think Lara is making that
2 point. I hear that fully.
3 I think unfortunately, what we know
4 from looking at data across the country is that
5 the more common problem is the reverse. And I
6 don't actually think -- this doesn't sound like
7 it's you at all. But the more common problem
8 across the country is that what would end up
9 happening is that, in your highest-need schools,
10 you end up getting a high concentration of
11 first-year teachers because the turnover is high,
12 and, as Audrey pointed out, it's really hard to
13 work there and people leave. And we know that
14 years of experience are not directly correlated
15 with being the best teacher and it depends on the
16 context.
17 But we also know from research that
18 years of experience do matter and that you get
19 better relative to yourself in your first year as
20 a teacher, and that you get better relative to
21 yourself in your second year as a teacher. So we

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1 think that that matters as an equity point.

2 We also think that, as we have been

3 told in public comment fairly often, we know right

4 now that the fiscal inequities that exist around

5 our country are problematic, and that around our

6 country, in Title I districts, Title I schools are

7 getting less state and local money than their

8 non-Title 1 counterparts.

9 Even if you have a methodology that

10 allocates to all schools based on the number of

11 teachers per students, let's say, what that leads

12 to is often, because we know this pattern of

13 inexperienced teachers going to Title I schools,

14 and as soon as they have the seniority and

15 flexibility to choose, they go to a less needy

16 school, what ends up happening is a lot more

17 dollars get spent in your non-Title I schools in a

18 lot of places.

19 To us in the Department when we read

20 the letter of the law, of the Supplement Not

21 Supplant test that said "all state and local funds

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1 that it would otherwise receive if it were not a
2 Title I school," it seemed pretty clear that if
3 the pattern is that you're getting less state and
4 local money in your Title I schools than your
5 non-Title 1 schools, it can't possibly be the case
6 that your methodology is resulting in you getting
7 all the state and local funds you could get if you
8 weren't a Title I school.
9 It just seems like, reading the letter
10 of the law, and also thinking about the
11 overarching purpose of the law, which is as we've
12 all talked about, inequity, and combining the
13 letter of the law with the intent of the law, of
14 the Civil Rights aspect of the law, it just seems
15 pretty clear that that hasn't worked in the past
16 to get to a place where we're breaking these
17 cycles of underfunding our highest poverty
18 schools.
19 So that was the type of public
20 commentary that we got in the public commentary.
21 MR. POHLMAN: That's helpful.

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1 MS. PODZIBA: Thanks.
2 Liz?
3 MS. KING: Yeah, I just wanted to
4 respond to Susan. I hope that you're also hearing
5 from the advocates for students and families that
6 there's a need to have a regulation here and
7 there's a need to insure that those intended
8 beneficiaries of the law are also being served.
9 MS. PODZIBA: Right, of course I hear
10 that. My goal is to get consensus, and so what
11 I'm hoping is, if I hear that all of the parties
12 who are going to be regulated can't live with it,
13 it means to me that the construct needs to shift.
14 And so, I totally understand the
15 intent, and what I am wishing for and have not
16 been able to bring the group to that place, is to
17 think together about how to be responsive to the
18 concerns that everyone is raising.
19 So, I just keep hearing that what's
20 there doesn't work and that we have to do it --
21 this has to be done, but I'm not hearing very much

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1 thinking together about saying, These concerns
2 that everybody has are legitimate and how do we
3 come up with a scheme, a mechanism that's
4 responsive to the concerns that everyone's
5 raising.
6 So it feels a lot to me like a
7 Ping-Pong ball, and I'm wishing more for a dance.
8 MS. KING: Ok, I just would say as a
9 general thing, I hope that the intended
10 beneficiaries of the law carry at least as much
11 weight as those responsible for operating under
12 regulation. That was just sort of my --
13 MS. PODZIBA: But I just want to
14 respond to that, because what I'm hearing around
15 the table is that everybody cares about the
16 students, and I think what's hurtful is that some
17 people are suggesting that not everybody cares
18 about their students. And what I'm hearing from
19 everyone, and have heard in all the phone calls
20 that I did before this, is that the focus is on
21 the students, and the focus is on the students

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1 that will benefit from Title I funds.

2 MS. KING: No, I just -- the

3 distinction that you had made is those who -- so I

4 just wanted to make sure that everybody was being

5 represented.

6 So I think -- Derrick, I wanted to sort

7 of come back to the point that you had made that

8 this was requiring a methodology, and I just want

9 to hear more about that.

10 My interpretation, when I look at this,

11 I think you could have, you know, a system of

12 state and local funding that is only categorical,

13 where you are only funding, you know, based on

14 individual funding streams, or you could have a

15 per-people expenditure system that is weighted. I

16 think you could even have a non-weighted system

17 under this, which is too bad, because you'd have a

18 weighted system. But you could have a

19 non-weighted system and that would be compliant.

20 So those are multiple methodologies an LEA could

21 have and still be compliant.

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1 Also, on the issue of sort of the
2 federal interest in this is not just a
3 recreational interest in the way that LEAs
4 allocate funding, right? There is a very specific
5 federal interest which is insuring that the
6 federal investment is in fact supplemental.
7 And I -- I'm just still interested in
8 hearing what the -- because if the problem is that
9 (A) is undermining -- as written, is undermining
10 the intent, I would like to hear more about how
11 (A) is undermining the intent and why an LEA that
12 fails to meet the (A) test should be considered
13 supplemental in the interest of, if we are going
14 to rewrite the language -- that's the construct
15 that I'm not understanding, is when is it
16 justified to violate (A) and still be
17 supplementing?
18 MR. CHAU: Can I respond to the
19 question?
20 I would like to hear why you believe
21 romanette (i) is unclear. Before we talk about

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1 (A) and (B), we need to talk about romanette (i).
2 MR. HAGER: Yes.
3 MS. KING: No, that's a fair point.
4 Sorry, I forgot about that part. I will come back
5 to it, but thanks.
6 MS. PODZIBA: Ron?
7 MR. HAGER: Yeah, Derrick, that
8 actually is my question from before that I asked
9 Ary. If you look at (B)(1)(i) in this regulatory
10 language, that's the one you're concerned with,
11 right? If you compare that to the statute, it is
12 almost verbatim. And the key operative terms here
13 are the same.
14 So, you know, that's where the
15 confusing of the methodology comes. Because the
16 (B)(1) -- if you look at the statute, which is
17 1012 -- sorry, Section 1118(B)(2) and I don't know
18 what page it's on on yours.
19 MS. PODZIBA: Seventy-four.
20 MR. HAGER: Page 74? I have Page 76.
21 I don't know how I got different pages, but if you

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1 look at Page 74 and look at the statute, so this
2 is I think the principal within which the
3 Department must operate, because this is in the
4 statute.
5 So if you read that language it says,
6 "To demonstrate compliance with paragraph (1),"
7 which is the general Supplement Not Supplant, "a
8 local agency shall"... "they must demonstrate that
9 the methodology used"... so here is methodology,
10 there is limitations on the methodology... "the
11 methodology used to allocate state and local funds
12 to each school receiving assistance under this
13 part," which is where they get the Title I from,
14 "that such school receive all," all, "of the state
15 and local funds it would otherwise receive if it
16 were not receiving assistance".
17 So that language constrains the test
18 that they can use, and my hearing of what Ary is
19 saying is, when we see that language in (B)(1)
20 that's basically from the statute, how else can we
21 operationalize that requirement? And that's why

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1 they have selected this as an alternative.
2 I mean, if there is another
3 alternative, going back to Susan, that would
4 comply with the statutory language, then what is
5 it? And I think that's also what Liz is trying to
6 say.
7 MR. CHAU: I understand that that's the
8 statutory language. My question is what about
9 that is unclear that requires us to have an (A)
10 and (B)?
11 MS. PODZIBA: In other words, just stay
12 with the statute.
13 MR. HAGER: I'm sorry, Derrick.
14 MS. PODZIBA: Marcus?
15 MR. CHEEKS: So Ron just pointed out
16 one part of what I wanted to identify is that,
17 romanette (i) is not in conflict with the law but
18 in concert with it. And from a practical
19 standpoint I still go back to some point in time,
20 on the ground they will need to know how to carry
21 out this test of compliance.

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1 MS. PODZIBA: Right.

2 MR. CHEEKS: People in school districts

3 will want to know that, and they will want to know

4 it from both sides of the fence, either making the

5 argument that, I'm in compliance, or making the

6 argument that, I'm not in compliance. The law

7 doesn't give us that room.

8 And the sad part about this is, we've

9 taken away the three-prong test but left the

10 primary driving factor of the three-prong test,

11 which is the fact that Title dollars cannot

12 supplant state and local funds.

13 I think our starting point is to find

14 which area of schools are not being represented in

15 this particular test and would be automatically

16 disenfranchised as a result of it.

17 If I'm listening to the group, small

18 schools are being covered. Title schools,

19 Title-like schools are being covered. What's not

20 covered are these high-poverty schools that are

21 not receiving Title funds but could inadvertently

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1 cause an automatic disenfranchisement -- or an
2 appearance that Title schools are not receiving
3 their equitable or equal share of Title I funds by
4 virtue of the fact that they're high-poverty
5 schools; by virtue of the formula process where
6 they may be all ready receiving as much or more
7 state and local dollars than Title schools would
8 be concerned.
9 So it's that group. I think it's that
10 area that we have to find the sweet spot in order
11 to be able to say they're in compliance or they're
12 not in compliance.
13 I think it hinges around this
14 conversation of "basic educational program," which
15 is defined as the floor of the state.
16 So, in a lot of ways, we're getting
17 into the weeds of trying to figure out how this
18 looks from a compliance standpoint, because it's
19 necessary, and absent having something there that
20 says, this is how the test will be carried out, I
21 think we leave ourselves vulnerable to this test

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1 to be developed over time and someone is going to
2 suffer as a result of it.
3 MS. PODZIBA: Could I just see if I
4 understand you?
5 I thought that the key concern was that
6 wealthy schools were getting more than their
7 share. But I think I hear you saying that
8 high-poverty schools that are not Title I schools
9 may be getting more, and that's the category of
10 schools that could cause questions about
11 compliance?
12 MR. CHEEKS: If I'm hearing the
13 conversation, that's the area. Because the
14 high-poverty -- the low-poverty, higher-fluency
15 schools, they're getting the resources, and if
16 they're causing this average test to be
17 imbalanced, then I think that's getting to the
18 point where the law is intending to go.
19 But if a school that is high poverty is
20 not receiving Title funding, simply because
21 there's not enough resources coming from the

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1 federal government to supply all of those schools,
2 but now as a result of this district putting more
3 resources because the high-poverty school now has
4 low-performing children, so now by virtue of
5 having the more experienced teachers there, you're
6 getting more dollars going to that school, that's
7 the group that I think is the sticking point that
8 I'm hearing from this conversation.
9 So how do we find -- and whether
10 it's -- whether it's under the area of exclusion,
11 whether it's under the area of -- as Derrick has
12 made mention -- how to deal with the law. If you
13 leave it there to the law, you're going to have an
14 auditor that's going to deal with us on this
15 matter.
16 So, I think at some point in time we
17 have to be able to address the buckets -- if
18 that's a term that Tony used earlier -- the
19 buckets of schools, by virtue of their status, in
20 order to see -- if those schools are following in
21 compliance with this law, then we know the law is

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1 working. If for some reason some groups of
2 schools that would normally be served well because
3 of this law, but now they're outside the spectrum,
4 then that's the group of schools we need to figure
5 out, how do we find an umbrella for them to be
6 under this.
7 MS. JACKSON: Marcus, does the
8 Title I-eligible help with that, or no?
9 MR. CHEEKS: I don't think so.
10 MS. JACKSON: Ok.
11 MR. CHEEKS: Because just by virtue of
12 being Title 1-eligible may not necessarily speak
13 to the resources that are going there. I mean, I
14 have plenty of Title I-eligible schools --
15 MS. JACKSON: No, I'm saying the
16 non-Title-I-eligible was put in so that, like what
17 Thomas was talking about where they have many
18 high-poverty schools, but they don't all get Title
19 I funding. So everyone would not be Title
20 I-eligible.
21 Does that make sense?

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1 MS. PODZIBA: Ok, let's let him think
2 about that.
3 Aaron?
4 MR. PAYMENT: So, just so that we're
5 not spinning our wheels, I guess I would like to
6 ask if there's any point of agreement from the
7 states to develop language that's more clear, or
8 if the bottom line for the states is that
9 there's -- that there isn't any point of
10 agreement, that we're not going to be able to
11 draft language?
12 Because otherwise we're going to spend
13 a lot of time and end up at the same place.
14 MS. PODZIBA: So are you proposing that
15 I see if there's dissent on the language that's
16 here, or the question about whether people think
17 if we work hard enough we'll be able to come up
18 with something?
19 MR. PAYMENT: I would say the second
20 one, but I think maybe the question should be
21 posed as, Is there any point of agreement to

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1 develop language that's clarifying?

2 It seems clear to me, but I think it's

3 a matter of developing language that states are

4 going to interpret as restrictive or as going to

5 create new categories.

6 I see it very differently than that. I

7 think clarifying it here makes it easier for the

8 auditor -- everything that they have expressed, I

9 think this addresses it.

10 The bottom line is, rather than

11 continue to try to negotiate back to the same

12 point, if there is no point of agreement, then I

13 don't think we should waste our time trying to

14 develop criteria.

15 MS. PODZIBA: So I appreciate your

16 concept. I'm just trying to understand that when

17 you say, is there a point of agreement, I don't

18 know what that means.

19 MR. PAYMENT: I guess I'm looking for,

20 if there's a proposal that is palatable for the

21 states that we could then negotiate to, rather

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1 than keep trying to come up with something that in
2 the end the states are just going to say, No, we
3 can't.
4 Based on the principal of how this
5 process is working, we have to have a consensus,
6 and in the end, if the states just say no to
7 everything that's proposed, then I really do think
8 we're wasting our time.
9 But if they have a proposal that they
10 find palatable that we can work with, then we can
11 respond to that.
12 So rather than drive it from draft
13 language that they can react to, let's ask the
14 states to develop language that they think they
15 can live with so that we can see if we can live
16 with that, as well.
17 MS. PODZIBA: So I'll put that to the
18 people who are having the most concerns. Do you
19 all think you can come up with a proposal that
20 would meet the concerns of everyone around the
21 table, including yourselves?

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1 Alvin.

2 MR. WILBANKS: First of all, and in due

3 respect to Aaron's comment, I think that there are

4 several oppositions here, not just the state's, as

5 I believe you referred to it. And everybody has

6 that right to be so, certainly.

7 But I think the issue is, Marcus, if

8 you're not a Title I school it wouldn't apply to

9 the Title I schools. This Supplement Not Supplant

10 applies to official Title I schools, meaning that

11 they have to have at least forty percent of

12 reduced lunch students to qualify. So if you are

13 below that or above that, there is some issue. I

14 don't know how you could really be above that if

15 you are not a Title I school. There may be some

16 issues where you can get into that...

17 But I think again we're getting back to

18 what we see is what's really not in the law to be

19 propagated as it is in the law. And I'm just

20 saying that to me that's a sticking point.

21 MS. PODZIBA: Right, I think in some

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1 ways the proposal then is to delete some parts of
2 this.
3 MR. WILBANKS: Yes.
4 MS. PODZIBA: So maybe we can take up
5 that proposal, which hasn't been put out as a
6 proposal, but we've been kind of winding around
7 it, and then we can see -- get a sense of where
8 the group is, which is what I think Aaron's point
9 is.
10 Thomas?
11 MR. AHART: I think we're conflating
12 comparability with Supplement Not Supplant, and I
13 think that's causing some frustration. We're
14 trying to take care of some comparability concerns
15 through Supplement Not Supplant.
16 I would also like to echo what Derrick
17 has suggested a number of times, and we seem to
18 not stay on that long enough to move forward, is
19 that under Page 4, under Compliance, (B)(1),
20 romanette (i), to clarify where or if there is
21 disagreement on that.

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1 And then just two more things, quick.
2 I want to just echo that it would be
3 really nice to have a red-line version after
4 lunch, that I think that would help moving the
5 discussion --
6 MR. AMERIKANER: We have it and we will
7 give it to you after lunch.
8 MR. AHART: Thank you.
9 And then the last thing, which hasn't
10 really been referenced yet, but there is some
11 statutory language relative to making requirements
12 that will cause an additional financial burden to
13 LEAs, and we've not had a discussion about what
14 the anticipated costs in these proposed regs would
15 be.
16 MS. PODZIBA: Let's hear from Liz and
17 Rita and then we'll break for lunch.
18 Liz.
19 MS. KING: Thanks, and sorry, Derrick.
20 I should have answered your question before. I
21 just got distracted on other things.

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1 So I do believe it is unclear,
2 specifically given the history on the way this has
3 been implemented by auditors and through Guidance
4 that we know has resulted in considerable
5 confusion and variability, which is why I think
6 there was interest in reforming the way that this
7 worked.
8 (1), as it stands, is insufficiently
9 clear. I believe that, as written, it would allow
10 for the discretion of an auditor to make an
11 individual determination about whether a
12 methodology is good or not, or whether the intent
13 was to specifically deny funds to Title I schools,
14 or something like that.
15 So, it is insufficiently clear,
16 especially given the ways in which auditing
17 discretion has operated in the past, and therefore
18 I think needs to be clarified through regulation
19 to avoid that problem again.
20 MS. PODZIBA: Rita?
21 MS. AHRENS: So, but I do agree with

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1 romanette (i) not being sufficient from a parent's
2 standpoint. You know, if that data were to be
3 provided, I'm not sure that in just romanette (i)
4 that I could, as an advocate, determine whether my
5 schools within the district were compliant.
6 I see number (ii) as safeguards for
7 stakeholders to determine whether the schools
8 within the districts are demonstrating, you know,
9 whether, you know, we are supplementing and not
10 supplanting.
11 I wanted to push back on the earlier
12 idea that we're prescribing methodology that isn't
13 flexible. I don't think we're doing that. What
14 we're doing is we're putting I guess some Guidance
15 into what we want to see the LEA methodology to
16 arrive at. It's very similar, as an analogy, if I
17 were to tell my students that, you know, you can
18 plan a trip to California as long as you spend
19 under a certain amount of point, and that you
20 arrive at a certain amount -- you know, you arrive
21 at the destination at a certain time.

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1 So I see (A) and (B) as those
2 guidelines that I'm giving people to demonstrate
3 that they have carried out the objective that I've
4 given them.
5 And so, the proposal I want to do,
6 because I know there's a lot of anxiety around (A)
7 and (B), is, because it sounds like there's a lot
8 of exceptions that people feel they have within
9 their local contexts that, you know, may not make
10 them able to come up with a methodology. So what
11 if we add a (C) in there that has "reporting on
12 why, despite your methodology, that you developed
13 at your LEA level, you may not show compliance
14 because you have a certain amount of," I guess
15 "non-Title I schools that are serving high-risk --
16 or high-need students, why your expenditures might
17 be over for (A)," or why they might be -- you
18 know.
19 So I think that's the proposal I want
20 to throw out there, is some sort of explanation,
21 so that folks can figure out what is going on at

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1 the district level.

2 MS. PODZIBA: I think it's a good time

3 to break for lunch. I think it will be good if

4 you can get us the color-coded version. And if

5 people want to caucus during lunch...

6 And again, if there is no solution

7 here, then it probably is less frustrating to get

8 to know that sooner rather than later.

9 On the other hand, if there is a sense

10 that there is a way to work this issue, then I

11 would not want to make that impossible.

12 MR. AMERIKANER: Just so folks know, I

13 don't know if you are using the room for lunch,

14 but the caucus room for you to use 1W112.

15 MS. PODZIBA: So it's 12:30. Let's

16 reconvene at 1:30.

17 (Whereupon at 12:30 p.m. a luncheon

18 recess was taken.)

19

20

21

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

2 (Whereupon at 1:37 p.m. the Negotiated

3 Rulemaking Committee meeting reconvened.)

4 MS. PODZIBA: I think if everyone sits

5 down, we can get started. It looks like almost

6 everyone's here.

7 MS. PODZIBA: Ok, so, you have before

8 you the red/blue version of the proposed language.

9 Janel has asked to make an a

10 announcement before we get started.

11 MS. GEORGE: Hi. The announcement is

12 we are honoring Ron's birthday. So we all want to

13 take the time and wish Ron a happy birthday, and

14 we do have some birthday treats. We have some

15 carrot cake and chocolate cupcakes. However, they

16 do contain nuts, so if you have a nut allergy,

17 that's probably not an option.

18 But we do want to wish Ron a happy

19 birthday.

20 MR. HAGER: I couldn't think of a

21 better way to spend my birthday.

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1 MS. PODZIBA: So those treats will be
2 coming around. And happy birthday.
3 Ary, I think you wanted to get us
4 started back into the issue paper.
5 MR. AMERIKANER: So I wanted to say two
6 things. One is that the primary thing is that I
7 think we heard a lot of really good feedback that
8 we are mulling over that I think was actually
9 really -- I know that it got a little heated at
10 times, but I think we really got some good
11 substantive feedback and concerns. And so we
12 would love some time to mull over too on that and
13 try to make it a little better and go over it with
14 our full team.
15 We know that we also sent everyone off
16 for lunch to ask everyone to think of proposals,
17 so we wanted to -- before we just said, We'll work
18 on this and cut up the conversation. I want to
19 ask if any new ideas came up over lunch, to put
20 those on the table, and then we could take those
21 back and mull it over.

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1 MS. PODZIBA: So are there any
2 proposals?
3 Eric?
4 MR. PARKER: Well, thank you.
5 In looking at what we talked about
6 before and looking at the new color-coded version,
7 my thoughts of the proposal would be looking at
8 (A) and (B) under number (1), sublet (ii) would be
9 to look at (B) moving to Guidance potentially,
10 given the conversations and what we had talked
11 about with the LE components of it, and looking at
12 that as a strong possibility in all the -- or at
13 least the large proponents of it, I think (A) and
14 (B) could potentially be served in Guidance.
15 MS. PODZIBA: Ok, discussion about
16 moving (A) and (B) into Guidance?
17 Liz?
18 MS. KING: So then the idea is -- I
19 mean, isn't that just essentially striking (2)?
20 I mean, I'll just say what I had said
21 before about the concerns I have about leaving one

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1 on its own, is that I think it is insufficiently
2 clear, especially given the history of the
3 variability in the way in which this provision has
4 been enforced. I think there needs to be greater
5 clarity so that auditors don't have sole
6 discretion about how they interpret the
7 methodologies offered by the district.
8 MS. PODZIBA: Lisa?
9 MS. MACK: I would like to see it
10 remain there because I believe there needs to be
11 some kind of matrix for measurement. I don't
12 believe it's clear enough without some kind of
13 explanation.
14 MS. PODZIBA: Audrey?
15 MS. JACKSON: So I just wanted to note
16 like, in hearing the Department before talk about
17 (A) and (B), that their attention was not to have
18 any forced teacher transfers, at least on a mass
19 scale. That was not the intention. And then
20 hearing concerns from others over lunch was that
21 they felt that would be absolutely what had to

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1 happen.

2 And so, I'm wondering -- I just want to

3 put that out there. Because if that's not your

4 intention and that's what people think would

5 happen, and that's one of the biggest issues, that

6 to think about how adjustments could be made, not

7 just to move to Guidance, but adjustments would be

8 made to make sure that that is not the unintended

9 consequence?

10 MS. PODZIBA: Ryan?

11 MR. RUELAS: You know, I heard this

12 morning that the regulation itself doesn't require

13 the districts to use any specific methodology,

14 right. And the example I gave you this morning in

15 regards to California and in regards to our

16 weighted per-pupil, et cetera, that extends to the

17 whole issue of foster youth, special ed, et

18 cetera...

19 So, to me I think that it seems to be

20 saying that we can't use our methodology in

21 essence because of the fact that, according to

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1 this in particular, in regards to (A), I think
2 it's going to be a conflict.
3 And also I'd like to point out what was
4 made earlier on several different occasions about
5 the whole issue of how it will conflict with
6 1118(B), because I believe that this is a
7 methodology.
8 So, I, too, would like to see it be
9 moved.
10 MS. PODZIBA: So you would support the
11 proposal?
12 MR. RUELAS: I would.
13 MS. PODZIBA: Ok. Janel?
14 MS. GEORGE: Again, I want to support
15 this remaining in here. The goal I think of the
16 regulations is to provide clarity and
17 implementation.
18 We have to be mindful -- again not to
19 beat this into the ground, but we have to be
20 mindful that this is in the statute, so we need
21 clarity on how to define this. It will be left to

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1 auditors if there is not additional clarity, and
2 in the absence of any alternative language or
3 proposal, this does create some clarity in terms
4 of implementation or what the result should be.
5 It's not prescribing the exact
6 methodology. What it is doing is underscoring or
7 outlining what the goals of this are to insure
8 that there is equity in spending.
9 And I guess one thing that would be
10 helpful for me for the -- and specifically I'm
11 thinking of Ryan, because you just pointed out
12 about the weighted funding form, how it might be
13 in violation.
14 I guess I want to get another example,
15 a specific example of where you would be in
16 violation of it, under your weighted funding
17 format.
18 MR. RUELAS: You know, as I mentioned
19 earlier in regards to California's weighted
20 funding formula, itself, it's just not -- you
21 know, foster youth is weighted, students with

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1 special needs are weighted. So one of the major
2 reasons why I have this is that the special
3 education students are weighted more heavily than
4 the other student groups themselves, ok?
5 MS. GEORGE: Right.
6 MR. RUELAS: And basically it could
7 skew the average spending of non-Title I schools,
8 ok, maybe because it says that we have to -- "the
9 results in the LEA spending on the amount of state
10 and local school's funds per pupil in each Title I
11 school that is equal to or greater than the
12 average amount spent per pupil in non-Title I
13 schools"...
14 MS. GEORGE: Right.
15 MR. RUELAS: My concern is could this
16 really incentivize, could this really push, you
17 know, LEAs to concentrate higher weighted students
18 to just Title I schools only.
19 MS. GEORGE: I guess my concern is, is
20 that all ready the case where we're seeing these
21 needs, particularly high-need students in Title I

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1 schools, which again is the purpose of this
2 funding, to help address those effects,
3 particularly in concentrated poverty? We see so
4 many overlaps, and I'm thinking of data that's in
5 government accountability reports and other
6 reports on Title I spending that documents a
7 higher concentration of high-needs students,
8 including special education students and other
9 students in Title I schools.
10 Now I guess that's why I'm looking for
11 something specific. I don't know if it's out
12 there, if there is a report or research or data
13 showing perhaps an example of a weighted-funding
14 formal state that shows that there would be an
15 actual inequity.
16 I hate for us to just speculate about
17 it. I'm wondering if -- because based on the data
18 that I've seen, there is such a high concentration
19 of Title 1 schools. And what I would not want to
20 happen, and again, dating back to the 1969 report,
21 is a misuse of this funding.

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1 So this, for me, provides needed
2 clarity.
3 MS. PODZIBA: Derrick?
4 MR. CHAU: I just wanted to get
5 clarification from the Department. About how long
6 has the methodology piece been required in our
7 schools, or has that been required?
8 Just romanette (i), I think there was
9 some discussion earlier about how -- does this
10 requirement provide a methodology to use to
11 allocate state and local funds. I think before
12 that it was -- there was a comment that somehow
13 we've been doing this and it hasn't worked. And I
14 just wanted to clarify that, whether this is new.
15 MR. AMERIKANER: It's a new component
16 of the statute, right? The statute before did not
17 say "methodology," and in the past, I believe, our
18 Guidance has referenced having a methodology of
19 allocating slots as one way to meet the
20 requirement. So in the past it has not been a
21 requirement. It has been an option.

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1 MR. CHAU: Just, I wanted to get
2 clarification on that, because if that's the case,
3 we haven't been held equally to the standard yet.
4 MR. AMERIKANER: Sorry, I understand
5 your point now.
6 So I did say that in the past, under
7 the schoolwide program, schoolwide program test,
8 that the way that we interpreted the requirement
9 was that you had a methodology that either
10 allocated slots or allocated money in a uniform
11 way to Title I and non-Title 1 schools.
12 So that part of it has been happening
13 for a while and we still see these inequities.
14 MR. CHAU: So I was just asking about
15 the extent to which this methodology has been in
16 place or have our schools been held accountable to
17 that, and it sounds like it was just for the
18 schoolwide schools and not for the targeted.
19 MR. AMERIKANER: So for a district that
20 has a schoolwide program school in it, that's how
21 the test was applied for those districts.

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1 MR. CHAU: Ok.

2 MR. AMERIKANER: And I was clarifying

3 that the majority of Title I schools are

4 schoolwide schools. So about seventy percent of

5 Title I schools in the past have been schoolwide

6 programs.

7 MR. CHAU: Thank you.

8 MS. PODZIBA: Liz?

9 MS. KING: Yeah, just a couple of

10 pieces on this.

11 Again the prohibition is on the

12 methodology that the LEA uses, not a prohibition

13 on the methodology the Secretary uses.

14 And also I wanted to ask a question of

15 Ryan. My hope is that California's weighted

16 funding system sends more money to higher poverty

17 schools. It seems to me that that would be the

18 goal of doing it. I mean, it seems like if that's

19 not helping, then that seems contrary to the

20 intent of what California is going.

21 So is more money going to

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1 higher-poverty schools, or is less money going to
2 higher-poverty schools?
3 MR. RUELAS: I would assume that more
4 is.
5 MS. KING: Ok --
6 MR. CHAU: I can provide clarity.
7 MR. RUELAS: But, yeah, he would be
8 familiar with that.
9 MR. CHAU: So from the perspective of
10 California, there is more funding allocated per
11 pupil for students for a higher need. Start with
12 that; not just poverty, higher needs kids. But
13 that's different than how districts allocate
14 funds, as well. So you kind of have to separate
15 both.
16 So there's state funding and then
17 there's the way that our districts allocate
18 funding within a district, and that's dependent on
19 whatever budgeting system, the way that the
20 district has allocated funds for teachers and
21 whatnot as well.

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1 So in LA Unified, we don't have a
2 school-based budgeting formula. It's based on
3 norms. It's based on an average teacher cost.
4 And this is something we talked about in the last
5 session, it's based on an average teacher cost so
6 as not to penalize schools for hiring more
7 experienced teachers or less experienced teachers.
8 So even though those schools may be
9 receiving more money, the way that our budget
10 works, it's possible that some of those schools
11 that are more Title I aligned might actually have
12 less money because the teacher costs might be very
13 different.
14 And as we said before, teacher costs
15 are the bulk of these costs, and when we talk
16 about equalizing funding or insuring that there's
17 equal funding, there's going to be an implication
18 on our teaching staff as well.
19 MS. KING: Right. Ok. That's super
20 helpful on how the California system works.
21 There isn't a weight for youth in

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1 foster care and there isn't a weight for students
2 with disabilities at the LEA level statewide,
3 right?
4 MR. CHAU: No. There is no requirement
5 for that at the moment.
6 MS. KING: Right.
7 MR. CHAU: Not at the LEA level.
8 MS. KING: So then this just
9 wouldn't -- this wouldn't affect the way the funds
10 go from the state to the LEA. So that part would
11 be unaffected.
12 And then I will say that I think that
13 there is a good rationale for why a school and,
14 you know -- to answer my own -- the question I
15 keep asking about, if you are noncompliant with
16 (A), when is it ok?
17 So I think the two examples that I've
18 heard that I find compelling and that I would want
19 to find a solution for, one is the example that
20 Marcus is using of a high-poverty LEA -- or a
21 high-poverty school that is not a Title I school.

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1 And I think that makes sense to me, why that would
2 be in the mix.
3 I think the scenario is probably one in
4 which you only have two schools within that grade
5 span -- one is Title I; one is not -- and they
6 both are of comparable poverty, although we would
7 have to think a little more about when that really
8 happened within schools.
9 The other example of, when you are
10 getting additional funding to serve students with
11 disabilities, I think that that is a fair point,
12 as well, especially since I recognize that a lot
13 of those funds are required by federal Civil
14 Rights law.
15 And so I would be open to finding a way
16 to make sure that that is not -- we're not
17 inadvertently having a negative affect on that.
18 So I'm happy to help work on that to meet those
19 two needs.
20 Are there other ways in which folks
21 want to adjust the (A) determination? I realize

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1 the proposal on the table is to get rid of it, and
2 I'm offering to amend that proposal, because I
3 don't support that underlying proposal.
4 But I would like to amend that to
5 preserve (A) --
6 MS. PODZIBA: Could you just wait to
7 see if there's dissent on that, and if you want to
8 offer another proposal, we will do that.
9 On this proposal that's on the table,
10 Lisa? Do you have a comment on this proposal?
11 MS. MACK: I just wanted to reiterate
12 that, as a parent, I like this language because it
13 let's us know that the schools have received the
14 state and local funding that it otherwise would
15 not receive if it was not a Title I school.
16 But as we're discussion this, I am open
17 to other proposals that can be put in place, but I
18 just don't believe that this (B)(1) romanette (i)
19 and (ii) are enough by themselves.
20 So if we can come to some kind of
21 agreement as a committee, for some kind of revised

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1 (A) or (B), or something like that, you know, for
2 criteria for methodology, you know, I'm open to
3 that as a parent.
4 I wanted to say that.
5 MS. PODZIBA: Ok. Tom.
6 MR. AHART: Just to make sure we're all
7 clear, what is the proposal right now? Is this to
8 strike (A) and (B)?
9 MS. PODZIBA: That's correct. That's
10 the proposal on the table.
11 MR. AHART: Yeah, I would be in support
12 of that. I just wanted to offer one more example
13 to maybe help clarify.
14 If we do the per-people spending, I can
15 literally staff a non-Title building at a much
16 richer rate than a Title building and meet that
17 rule. And then the Title funds could be used, if
18 you'd look at it on the services being provided
19 for kids, would literally appear to be
20 supplanting; even though by this rule, by this
21 language, it would be supplementing. And that

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1 wouldn't be what was happening. It would
2 literally be supplanting, if I'm forced to follow
3 this dollar spent per student.
4 So I still have the idea that concept
5 isn't quite fully understood, and it's very much a
6 reality at the LEA level.
7 MS. PODZIBA: Liz?
8 MS. KING: Yeah, so I will say, I mean,
9 this is why all of the flexibility here does make
10 me nervous. Because basically what this says is,
11 While you are no longer prohibited from --
12 This prohibits supplanting on a dollar
13 basis, but absolutely does not supplant on a
14 services basis.
15 So, for example, the reading program
16 you paid for with state and local funds last year
17 you can pay for with Title I funds under this
18 provision.
19 The math program you provide in
20 compliance with state law that you paid for with
21 state and local funds, or that you are now

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1 including because of a new state law, you can now
2 pay for with Title I funds.
3 So I totally agree with you, and I
4 think that's part of why this is not the only
5 oversight and protection that we need to make sure
6 that, not only are the funds supplementing, but
7 the services are comparable and are of high
8 quality, and all of these other things that we
9 need that are outside the scope of this
10 requirement.
11 But I absolutely agree with you that
12 you could fail all three of the existing
13 individual services tests definitions under the
14 new flexibility provided in (A).
15 MS. PODZIBA: Ok. I want to call the
16 question on this because I think that is probably
17 not going to fly, and if people are coming up with
18 new proposals, we should make room for that.
19 Is there a dissent on this proposal to
20 strike (1) and (2)?
21 Yes. Ok.

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1 So I just want to remind people, the
2 Department said they'd take this back, and so what
3 we're trying to do now is see if there is any more
4 information or concerns or guidance, dare I say,
5 that we want to give to the Department before we
6 do that and come back with something that they're
7 hoping for.
8 Aaron?
9 MR. PAYMENT: So I would just think it
10 would be helpful to know what would work on behalf
11 of those who object to the language, so that we
12 can refine that. But also I think if we can come
13 up with a statistic that is better than the
14 average and maybe have somebody think through what
15 the implications are for the local level, to be
16 the least burdensome for the local level. That
17 would be what I'd do.
18 MS. PODZIBA: That's advice to the
19 Department?
20 Ok. Any other thoughts to the
21 Department?

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1 Derrick?

2 MR. CHAU: Since this was in Guidance

3 before, I'm wondering if, rather than make it a

4 requirement that the methodology meet these

5 requirements, might it not be better to just

6 include it as maybe a consideration or something

7 to consider when they're determining the

8 methodology; just another way to keep it in there

9 but have it be a recommendation rather than a

10 requirement.

11 MS. PODZIBA: Ok, any other thoughts?

12 Were there some thoughts about exemptions,

13 exceptions?

14 Liz?

15 MS. KING: Yeah, and I'm sorry, I

16 realize it's more helpful with specific wording,

17 and I can think about that for a minute, but it

18 would just be helpful to know in theory if it

19 would be sufficient to provide for an exception

20 that covers both the issue that Marcus raised and

21 the issue that others have raised about additional

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1 funds used to meet the needs of students with
2 disabilities.
3 If that would be a sufficient
4 adjustment, I'm happy to come up with the
5 language, but I think in concept -- and if people
6 would need the words to make a decision, that's
7 fair, too, but in concept, would that be
8 sufficient?
9 MS. PODZIBA: Could we get some
10 response to that?
11 So the proposal without a specific
12 language is to add two exceptions, if I understand
13 correctly. One would be for funds related to
14 students with disabilities, and the other is for
15 high-poverty non-Title I schools.
16 MR. AMERIKANER: Or it sounds to me
17 like Liz was saying it could be done through an
18 exception, as long as we come up with somehow the
19 substance to address those issues.
20 MS. KING: Yeah, I'm not sure that I
21 would put it in the Exceptions. I might treat

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1 them as Title I schools for the purpose of the
2 determination.
3 But I'm also open to talking about that
4 part of it. It's just in concept, preserving a
5 per-people test, with those exceptions.
6 MS. PODZIBA: My apologies.
7 Conceptually, does that sound like people would
8 support that?
9 Richard?
10 MR. POHLMAN: I'm sorry. I don't have
11 a comment for that element. I was going to bring
12 up something else for the Department.
13 MS. PODZIBA: Ok, could you hang on for
14 a minute.
15 Lara.
16 MS. EVANGELISTA: I just wanted to add
17 ELLs to that as well. Because a lot of weighted
18 student formulas also fund ELLs, in addition to
19 the schools that are not necessarily high-poverty
20 schools, but they get additional funding.
21 MS. PODZIBA: Other thoughts about --

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1 I'm not going to say exceptions, but somehow
2 making space for those thoughts?
3 MR. POHLMAN: Mine is on another topic.
4 But not in response to this.
5 MS. PODZIBA: Sorry, Mary Cathryn.
6 MS. RICKER: I feel very strongly that
7 we would need an exception, that you could not
8 violate a local collective bargaining agreement.
9 MS. PODZIBA: Liz?
10 MS. KING: I have a question -- I think
11 there is a rule of construction that does that,
12 but I want to check that that is the case.
13 I think there's a rule of construction
14 that applies across Title I around preserving the
15 collective bargaining.
16 MS. PODZIBA: Thomas --
17 MS. RICKER: I would just say that one
18 of my lingering concerns about (A) is that it will
19 undermine local agreements that some of us have
20 very creatively constructed with our communities
21 to protect programs we've built for some of our

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1 most vulnerable populations in the way that we
2 need to build out those programs.
3 MS. PODZIBA: Thomas?
4 MR. AHART: No, I don't think that
5 would satisfy the root problem that I'm struggling
6 with here.
7 MS. PODZIBA: Marcus.
8 MR. CHEEKS: I'm going to ask the
9 Department to -- I think the pathway we're going
10 now is going to create more of a confusion.
11 MS. RICKER: Yes.
12 MR. CHEEKS: And I wonder if there's a
13 way to address these matters without basically
14 pushing schools out onto a ledge. Because I think
15 the more we spell this out and piecemeal it
16 together, it's going to get more and more
17 difficult.
18 And these things, if I'm looking at a
19 state's definition under its basic educational
20 program of what should be being covered, by law,
21 Title VI should cover these areas.

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1 So I would really ask the Department to
2 consider those factors that may not necessarily be
3 listed here under the Supplement Not Supplant law,
4 but how all these other things could be tied
5 into -- even without making a definition, by
6 virtue of other federal regulations that are
7 requiring school districts and states to look at
8 these particular areas.
9 MS. PODZIBA: Richard?
10 MR. POHLMAN: Yeah, I'm wondering, you
11 know, as we're trying to talk about compromise, if
12 one of my most unfavorite terms could be maybe
13 thought through by the Department, which is using
14 "rebuttable presumption," in that, by constructing
15 and defining, getting to Liz's point, a test or
16 clarifying the test, but also providing for, with
17 a rebuttal presumption, the idea being that
18 failure of that test would create the presumption
19 that you have not complied with Supplement Not
20 Supplant, however that presumption could be
21 rebutted through the auditing process so that you

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1 could show that there are extenuating
2 circumstances, whether it be a collective
3 bargaining agreement, other provisions of local
4 law, et cetera, that don't conform to whatever
5 definition you have talked about.
6 You are likely familiar with this, as
7 are many people at the table, from the old
8 Supplement Not Supplant. I wonder if there is a
9 prohibition against that within the Congressional
10 language -- I don't read one there -- and if it
11 would be a useful tool to get around some of what
12 I am hearing as sort of a log jam.
13 MS. PODZIBA: Thank you. Sometimes
14 it's not compromise, but it's creative or
15 integration of interests.
16 MR. POHLMAN: Let the record reflect
17 that in my counsel.
18 MS. PODZIBA: Liz?
19 MS. KING: To Rich's rebuttable, I
20 think that is a good example of why I am so
21 uncomfortable dropping (A) and (B).

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1 A scenario in which this exact
2 conversation happens district by district with
3 individual auditors, and the back and forth about
4 whether it is or is not complying with the intent,
5 just seems like a bad day for everybody and a lot
6 of funds spent on compliance and not serving
7 children; which is certainly not in our interest,
8 nor is it the desire of anybody around this table.
9 So rebuttable I think is not a good
10 scenario.
11 And the larger goal here obviously that
12 I have is clear, but one of the goals that I have
13 is also the clarity with which this operates and
14 the limited discretion that auditors have.
15 Because in order for this provision to
16 be meaningful, I think auditors need very clear
17 limitations in which they operate, and I think
18 that opens the door too wide.
19 MS. PODZIBA: Janel?
20 MS. GEORGE: I don't know if this is a
21 viable option or not. If it's possible to put

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1 in -- what is it called? Numerette?
2 Sub-numerette (ii), just after schools, before
3 "provided," just put appeared there. And I'm just
4 throwing this out. I'm just thinking out loud.
5 And then maybe a (iii), Roman numerette (iii), to
6 say "compliance may be determined by" -- I don't
7 know. "If the methodology". "Compliance must be
8 determined by whether the methodology," and then I
9 wonder if we can then add, after (A) and (B),
10 probably -- and also consideration of some way to
11 address the weighted funding formula, special
12 education students, or presence of high-needs
13 students, including special education students,
14 ELL's, et cetera.
15 That's just something I'm putting out
16 there. I don't know if that might work or not, to
17 address the concerns.
18 And I don't know, Derrick or Thomas, if
19 that might address some of your concerns.
20 MS. PODZIBA: Derrick?
21 MR. CHAU: I just want to go back and

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1 get clarity again. What I heard from Ary earlier
2 was that auditors have been using this process for
3 part of the Title I already.
4 MR. AMERIKANER: In theory. They
5 should have been. We've heard from a lot of
6 places that's in mixed application.
7 MR. CHAU: So auditors are all ready
8 using this and have been -- so are familiar with
9 this idea of testing the methodology. So I don't
10 understand why we would need to further complicate
11 things by adding additional requirements to it.
12 I understand that you're not happy with
13 the results of it, but I don't know. Maybe that's
14 where our differences are -- I think that's -- I
15 just wanted to put that out there.
16 MS. JACKSON: You have to speak louder.
17 MR. PAYMENT: Use your teacher voice.
18 MR. AMERIKANER: I don't know if my
19 teacher voice will help the transcripter.
20 I want to ask a follow-up question
21 about your idea about the rebuttable presumption.

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1 I felt like that could been a
2 breakthrough.
3 Is there a -- do you have a little more
4 about --
5 MR. POHLMAN: How it works?
6 MR. AMERIKANER: Yeah. What would be
7 the kind of thing you could rebut the presumption
8 with?
9 MR. POHLMAN: I think that is probably
10 what would need to be defined in Guidance. So,
11 for instance, if a romanette (iii) said that
12 this -- that, you know, "in the absence of proof
13 or in the absence of evidence from the LEA
14 demonstrating methodologies consistent with,"
15 whatever that provision is, "an LEA will be
16 determined to have used its funds to supplement
17 and not supplant -- to supplant. However, that
18 determination may be rebutted by the LEA".
19 You can end the regulation there,
20 right? You can simply provide the option for a
21 rebuttal presumption in the regulation. Guidance

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1 is where you could elaborate on how one might
2 rebut that presumption, right? And that's when,
3 as a LEA administrator, right, you could use the
4 Guidance in your conversations with the auditors
5 to say, Well, we've got a collective bargaining
6 agreement. We've got a formula that, despite the
7 fact it's showing an overall expenditure rate that
8 exceeds this test, the allocation itself was, you
9 know, X Y or Z, you have these" --
10 I can't come up with all of these off
11 the top of my head. I'm sorry. I could probably
12 think of a lot of them, but I don't want to get
13 bogged down with that at this table, because I
14 think that's what's maybe keeping this from moving
15 forward.
16 Honestly in response to my proposal, I
17 don't have a personal investment in this, and so
18 I'm struggling to sort of not talk a lot on this
19 issue, because I hear a lot of other invested
20 interests.
21 That proposal was made not as one to

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1 sort of augment protections or, you know, degrade
2 them, but one to move us through them as an option
3 for something.
4 So if it's honestly not something that
5 people would agree to, I don't know how much
6 farther it's going to go.
7 MS. PODZIBA: Liz?
8 MR. POHLMAN: And there's lots of
9 information Kay can probably talk to you about
10 regarding the rebuttable presumptions.
11 MS. KING: So a couple of different
12 pieces in terms of the history of this methodology
13 stuff...
14 I mean, the scope of S&S compliance is
15 expanded now to include targeted assistance
16 schools which would also be covered under that,
17 given the prohibition on the individual services
18 test included on the statute. So I think it is
19 reasonable to have a higher bar when the scope of
20 the coverage of that is expanded.
21 Also, the other thing that has happened

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1 is that a test which was once Guidance is now
2 addressed in the law through a prohibition, and so
3 I think it is reasonable sort of thinking about an
4 escalation here. That which is Guidance is now
5 statutory. I think it's reasonable then to have
6 in the regulation that which was previously simply
7 just in Guidance.
8 And also, I just wanted to make sure --
9 I mean, the Department, in the event that there
10 were a regulation that did not include (A) and
11 (B), the Department is fully within their legal
12 authority to write Guidance which says, In order
13 to demonstrate compliance, you must show both (A)
14 and (B).
15 That will happen in a room that we are
16 not -- you know, that will happen without us
17 negotiating around it. But that is fully within
18 their authority, would be to continue to implement
19 this through Guidance rather than through
20 Regulation.
21 I still believe that it is important

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1 that it be kept in Guidance -- sorry, through
2 Regulation.
3 Thank you. Thank you, Ron.
4 MS. PODZIBA: I think we know what you
5 meant.
6 MR. CHEEKS: Her subconscious was
7 coming out.
8 MS. KING: Nicely played, Marcus,
9 nicely played.
10 MS. PODZIBA: Rita?
11 MS. AHRENS: I wanted to just comment
12 on the rebuttable presumption. I think it's
13 somewhat similar to the proposal I put forward on
14 the report that talked about why your numbers
15 might not meet (A) and (B), but it's a more
16 proactive thing.
17 I think if you anticipate your numbers
18 are going to be wonky due to meeting the needs of
19 high-need populations, such as English learners
20 and students with disabilities, you should
21 proactively anticipate that and present the report

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1 ahead of time.

2 But, you know, I want to say that the

3 rebuttable presumption piece, I would be very

4 uncomfortable if we were to move down that route

5 and we did not define what the demonstrated

6 evidence would need to be to show that you were in

7 compliance.

8 Because I think the point of this whole

9 particular regulation is to show compliance. And

10 so I want some affirmative proof that you're in

11 compliance. And it should not be left in

12 Guidance. It should be in regulation.

13 MS. PODZIBA: Thomas?

14 MR. AHART: Yeah, I tried to touch on

15 this prior to our lunch break regarding costs.

16 The statute does say that "This Act prohibits the

17 federal government from mandating, directing or

18 controlling a state local education agency or

19 school's curriculum, program of instruction, or

20 allocation of state and local resources and from

21 mandating a state, or any subdivision thereof, to

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1 spend any funds or incur any costs not paid for
2 under such Act".
3 I know that if we left (A) and (B) as
4 is, certainly my district would have to undertake
5 additional costs to be in compliance under this
6 rule, potentially, and I know there are other
7 districts that would have much larger price tags,
8 and I'm wondering -- in addition to the
9 reallocation. So I wonder if you all had a chance
10 to consider that at all, the cost question?
11 MR. AMERIKANER: Thomas, could you say
12 a little bit more about what the costs would be
13 that you would incur? Because my understanding is
14 that this requirement is about how you allocate
15 your pot of money, not changing the amount of
16 money that's spent in schools.
17 MR. AHART: Well, to put it simply,
18 unless I violate my local teacher's contract by
19 forcing the movement of teachers on a pretty
20 wholesale basis, I'm going to have to somehow come
21 up with millions of dollars to spend in my Title

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1 buildings, which I would argue now on meeting the
2 Supplement Not Supplant rule, and you know, I
3 can't do either of those. I don't have the money
4 available to meet this reg, as written, nor do I
5 have the ability to reallocate as this dictates.
6 And I have less of a problem with it than a lot of
7 other districts around this table.
8 MR. AMERIKANER: That's helpful. I
9 appreciate that clarification.
10 I think what I'm hearing is that it
11 could be that there's a cost implication, but
12 there could also be a collective bargaining issue
13 that I think Mary Cathryn has raised and that
14 others have raised around the table about, like,
15 would it help if -- well, we have to think about
16 sort of how we can think about getting around
17 that.
18 But I hear you. I hear the point that
19 you're raising.
20 MS. PODZIBA: Mary Cathryn?
21 MS. RICKER: Yeah, thank you.

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1 I am still concerned that (C) does not
2 address the issue and, similar to Thomas, I know
3 that before my time my union worked really, really
4 hard to get an average teacher salary used in
5 staffing schools so that there would not be the
6 adverse selection of experienced teachers, given
7 that our negotiated agreement had traditional
8 wages and an experience quotient to it.
9 Additionally, since then, we have had
10 the opportunity to craft some really creative
11 exceptions to other things, like seniority-based
12 layoffs where we are specifically staffing schools
13 with the teachers intended for those schools;
14 working with the community to create an exception
15 at our American Indian magnet, so that it could
16 be -- so that the priority was to have it staffed
17 by people with an eminence credential or a
18 specialty from the University of Minnesota, and
19 then, after doing that, allowing that school to
20 expand, or helping that school expand from a K6 to
21 a K8, and at the same time enacting the class-size

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1 language that we successfully negotiated, meaning
2 that they got to expand grade levels and reduce
3 class sizes meant that there was an infusion of
4 teachers in that school. While some were
5 experienced, many of them were new to our
6 district, or would be considered new to our
7 district.
8 And so I could very much see that -- as
9 well as the language we crafted around our
10 language emersion programs, or Montessori
11 programs, similarly at the same time we had
12 language that improved case-study ratios for our
13 special education teachers and class-size ratios
14 for our Title I schools meant that some of these
15 schools got an infusion of teachers that would be
16 seen as perhaps early in their careers.
17 So I could very much see that it would
18 look like we were not spending as much in those
19 schools on a per-teacher basis, when really what
20 we were doing was making a concerted effort to
21 actually better meet the needs of students in

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1 those schools.

2 And so, I see the complexities. I need

3 to see where we believe that collective bargaining

4 is addressed, because it's my understanding it's

5 not addressed in this portion, but, you know, I

6 would love that assurance. I really believe that

7 this -- not to mention the wage and benefit

8 suppression that could be experienced at a

9 bargaining table that we'll have to prepare for,

10 if indeed it is the idea that people are going to

11 try to start, you know, flatlining wages and

12 benefits as a way of getting around having really

13 great, robust local conversations within the

14 community about how to better meet the needs of

15 our kids.

16 MS. PODZIBA: Ary?

17 MR. AMERIKANER: So I think this has

18 been helpful. I feel like we're getting back to

19 hearing concerns, just generally, but if anyone

20 else has any -- I'm happy to keep having a

21 conversation, but I know you guys want to get back

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1 to finishing up assessments as well. Is there
2 anything else that -- sort of new ideas that -- or
3 just proposals that we should be thinking about,
4 going forward?
5 MS. PODZIBA: Richard?
6 MR. POHLMAN: Super quick: it's been
7 brought to my attention there's some general
8 prohibitions in 1111(E) around Guidance that I
9 am -- I'm not versed in. But I would just mention
10 it on the record and the Department as you guys
11 are going back to see what you can and can't do.
12 Again, this is not an area that I am
13 well-versed in, but I wanted to address the issue.
14 I don't think we have a copy of 1111(E).
15 MR. AMERIKANER: No, I don't think we
16 do. I personally don't know which one it is.
17 MR. POHLMAN: I just wanted to raise a
18 simple flag.
19 MS. PODZIBA: So, Ary, do you just want
20 to tell us what your next steps are?
21 MR. AMERIKANER: So our next steps are

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1 to go back and wrestle with some of the comments
2 and suggestions and concerns that we've heard and
3 see what we can do and work with our lawyers and
4 our team and we will get on that as you guys turn
5 back to Assessments.
6 Thank you all very much. I know this
7 was a hard issue. I know everybody has tried to
8 do the right thing here.
9 MS. PODZIBA: Ok, so we could just take
10 a deep breath and I think we're going to move back
11 to Assessments, back to Patrick, and start with
12 something that should be, I'm hoping, fairly easy,
13 which is Issue 6, and it's simply the material in
14 the package that wasn't part of any of the issue
15 papers.
16 So to make it easier, because there are
17 two choices, shall we all use the red-line version
18 of the package?
19 MR. ROONEY: I was going to propose the
20 alternative. It might be easier to go with the
21 other version, just so you could actually start to

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1 see what it looks like.

2 MS. PODZIBA: Ok.

3 MR. ROONEY: And just a reminder,

4 something we handed you Wednesday morning, I think

5 it was Wednesday, was a matrix that actually Susan

6 was kind enough to draft which helps show what

7 language in the full package in Issue Paper 6 --

8 Alvin is modeling it for us -- that shows what

9 pages of the full package for both the red-line or

10 the clean version that we haven't addressed in one

11 of the issue papers.

12 And I'm also going to hand out

13 something that we're hoping, after Issue Paper 6,

14 to also bring back, which is Issue Paper 2, to see

15 if we can try to come to some resolution after

16 discussing it yesterday. So after Issue Paper 6,

17 we want to come back. There is one more point for

18 Issue Paper 2.

19 So I'm going to hand that out and we'll

20 circle around to it afterwards. So I just want to

21 give it to you before we start on six.

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1 MS. PODZIBA: So Issue Paper 6 is at
2 the tab. There are two versions. One is clean,
3 and one is redlined. One has strikeouts and one
4 does not, but both are color-coded.
5 So, if you go to tab six, there are a
6 couple of purple sheets, and then after the second
7 purple sheet is the clean version, and then the
8 matrix was handed out yesterday.
9 So, if everyone can try and get those
10 in front of you.
11 MS. JACKSON: Are there extra matrixes?
12 Because I didn't get one yesterday.
13 MS. PODZIBA: If someone can bring up
14 some extra versions of the matrix, copies. Not
15 versions, copies.
16 There is a new paper two, but please
17 put that behind something for now, yes.
18 May I have your attention. Does
19 everybody have the clean version of Issue Paper 6
20 and a matrix?
21 MS. JACKSON: I'm sharing.

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1 MS. PODZIBA: You're sharing. Everyone
2 have access to a matrix?
3 All right, Patrick.
4 MR. ROONEY: Before I start, I just
5 want to say, after sitting at the table but not
6 having to be an active part of the last
7 conversation, I have very much a new found respect
8 for all of the thoughts and the work that you guys
9 have put into the last two and a half days, and
10 that I know you'll put in for the last half day
11 and the last several weeks, as you've been
12 preparing for this.
13 Clearly you're giving a lot of thought
14 to this and a lot of deliberation, and I
15 appreciate the dedication that you all are showing
16 and the perseverance that you're all showing as
17 well, that this has not been an easy conversation
18 to have, for all of you, and I appreciate the
19 dedication and the commitment you guys have in
20 trying to think about the right language to help
21 all kids in school.

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1 So it's been with profound respect from
2 being on the side watching Ary do that. But I
3 just wanted to say that.
4 Issue Paper 6, I think our intent is
5 actually not to go through this like we did two
6 weeks ago when I laid out what all the different
7 sections are, but just to highlight, there are
8 only two or three things that I wanted to make
9 sure that I pointed out to you, but I think the
10 best way to do it may be to go kind of chunk by
11 chunk to see if there are pieces that we didn't
12 talk about that you would like to raise.
13 And just to remind you, the matrix
14 shows you where the issue papers show up in the
15 text of the full package of Issue Paper 6. And we
16 talked a lot about potential changes or amendments
17 you would make to the different issue papers.
18 They're not reflected in this since this is the
19 version that was sent last week to all of you.
20 So, there are some changes that will be
21 made through this in light of the conversation we

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1 had on Wednesday and Thursday and maybe we'll have
2 later on Issue Paper 2 when we get to that
3 resolution. So I just put that out there to
4 start.
5 So, with that, I guess the question
6 would be whether anyone has any questions about --
7 or should I just do this page by page?
8 Susan is that the way to do it?
9 MS. PODZIBA: Yeah, I think if we just
10 go page by page or get to a section we have to
11 focus on.
12 MR. ROONEY: The other reminder to give
13 you before we start is that, things that are in
14 bold are things that -- especially if it's in blue
15 and bold, are changes that were made that were
16 something we either made a mistake the last time
17 in the versions with what's in the statutory
18 language and that we corrected.
19 So, the best example right now is on
20 Page 1, line 23, we previously had the version say
21 "Universal Design," and Audrey flagged for us that

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1 it was "Universal Design for Learning," so we
2 added that "for Learning" in the bold. Those are
3 kind of the simplest changes in the table three
4 weeks ago or that my colleagues and I, as we were
5 looking at this version today, caught something
6 that was wrong in the statute and tried to fix it
7 in this version.
8 Does that make sense? Does anyone have
9 anything they would flag on Page 1?
10 MS. PODZIBA: Rita?
11 MS. AHRENS: I think we didn't get to
12 it, and I meant to raise it earlier.
13 On (B)(1), I just wanted to add in
14 where it says "measures student performance." It
15 should be "measures student performance at all
16 ability levels, including the ability to
17 differentiate performance among low-performing
18 students".
19 I think I raised it in the last session
20 or to make sure that we could capture in those
21 assessments the lowest performing students,

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1 because I think there were issues that were
2 raised.
3 MR. ROONEY: Sorry, are you looking at
4 line -- it might be helpful --
5 MS. AHRENS: Line 38.
6 MR. ROONEY: Sorry, I was looking at a
7 different (B)(1). Thank you.
8 MS. BECKER: Can you say it again?
9 MS. AHRENS: Yes. I would like to add
10 after "student performance," "at all ability
11 levels, including the ability to differentiate
12 performance among low-performing students".
13 MS. PODZIBA: Kerri?
14 MS. BRIGGS: So I was looking through
15 the statute, because my knowledge was NCOB days on
16 this stuff. But previously there used to be a
17 requirement to have three or four different
18 achievement levels: the professional, advanced,
19 blah, blah, blah. I didn't see those in the
20 statute, so I assume that's why they weren't
21 repeated in red, and I think that that addition

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1 sort of reintroduces that concept in a way that
2 wasn't intended.
3 MS. PODZIBA: So, does that mean you
4 dissent from that proposal?
5 MS. BRIGGS: Yes.
6 MS. PODZIBA: Ok. Patrick.
7 MR. ROONEY: Sorry, Kay is looking to
8 try to find the clarification to Kerri's question.
9 I think the language in the statute is that the
10 state needs to have three levels of achievement.
11 MS. BRIGGS: At least.
12 MR. ROONEY: At least? For the
13 assessment system. So it's in a part of the
14 statute that's not -- it's in 1111(B)(1) and all
15 of the assessment components are in 1111(B)(2),
16 which is why it's not in the statute that you have
17 in front of you. And 1111(B)(1) is talking about
18 the standards. We're not negotiating on the
19 standards. We're not trying to change the
20 regulations around.
21 So I'll read the language if it's

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1 helpful for the people in the room... "Each state
2 in its plan shall provide an assurance that the
3 state has adopted challenging academic content
4 standards and aligned academic achievement
5 standards, referred to in this Act as the
6 challenging state academic standards"... that's
7 the term that we had used throughout our regs, our
8 proposed regs, "which achievement level" -- "which
9 achievement standard shall include not less than
10 three levels of achievement that will be used by
11 the state, its LEAs, and its schools to carry out
12 this part of Title I".
13 So that is the language that the state
14 has to have, at least three levels of achievement
15 on assessments, which is where this piece comes
16 from that's in our existing regulation that is in
17 front of you right now.
18 MS. PODZIBA: So, are you saying that
19 Rita's proposal actually is statutory? Patrick?
20 MR. ROONEY: I'm sorry, Susan?
21 MS. PODZIBA: Are you saying that

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1 Rita's proposal actually does come from the
2 statute?
3 MR. ROONEY: So Rita's proposal, that
4 language is not in our statute. The statute is
5 just that the state has three levels of
6 achievement. Not necessarily that are
7 differentiated between low-performing students in
8 particular. They just need to have three levels
9 as defined by the state. Presumably they would be
10 identifying low, medium and high, but the statute
11 doesn't say that.
12 MS. PODZIBA: Right, so I'm just trying
13 to understand. So should this text differentiate
14 the different levels of achievement?
15 MS. RIGLING: We're not regulating on
16 standards and that includes content standards or
17 achievement standards.
18 MS. JACKSON: Can you speak into the
19 mic.
20 MS. RIGLING: We are not regulating on
21 either content standards or achievement standards,

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1 so the statutory language is what would be used.
2 And I would think that adding in this addition
3 would actually be contrary to the statutory
4 language regarding achievement standards.
5 So, I would propose that we not do
6 that, because I think the statute gives the state
7 the responsibility to define what achievement
8 levels are, and they have to have three, but they
9 don't have to have more than that.
10 MS. PODZIBA: Rita.
11 MS. AHRENS: Can we amend that just to
12 "measure student performance at different ability
13 levels"? Because I want to make sure that the
14 assessment is covered at multiple levels.
15 MR. ROONEY: I'm sorry. I don't know
16 whether they have a feeling about that. If
17 they're measuring student achievement, student
18 performance based on achievement standards, and
19 they have to have at least three achievement
20 levels, doesn't that obviate the need for this
21 addition?

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1 MS. AHRENS: So the reason --

2 MS. PODZIBA: Rita, let me get Lynn in.

3 MS. AHRENS: I wanted to respond to it.

4 MS. PODZIBA: I know, but Lynn also

5 want to say something on this issue.

6 MS. GOSS: Thank you.

7 I just want to make sure that we don't

8 confuse it more in that we're identifying it at

9 each level and then having to have three at each

10 level, or -- I think, you know, just making sure,

11 when you're doing the testing and you're doing the

12 other things at all the different levels, those

13 are already described elsewhere. This is just

14 measuring student performance at whatever level

15 that they're tested, and that's described

16 somewhere else?

17 MS. PODZIBA: Rita?

18 MS. AHRENS: And I guess I wasn't very

19 clear on this, but the reason I'm raising this

20 is -- and that I raised it at the first session,

21 is that there are assessments, and especially for

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1 the local LEA -- the option for a local LEA to
2 adopt nationally-recognized assessments, there are
3 some assessments out there that do not capture
4 performance of lower-performing students, and this
5 is meant to address that.
6 I think I referenced at the first
7 session was that there were some assessments that
8 did not capture eighty-seven percent of
9 English-language learners' performance, for
10 example.
11 So it's problematic and it's something
12 I wanted to flag to make sure we somehow address
13 it.
14 MS. PODZIBA: Kerri?
15 MS. BRIGGS: I think one question is
16 about introducing a new terminology around ability
17 levels. That's not something that's referenced in
18 the statue, achievement levels. I think adding in
19 something new adds a whole new level of
20 complication.
21 I think referencing the need to have

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1 three achievement levels is fine, it's perfectly
2 fine, but to require differentiation within each
3 of those three is -- doesn't make sense.
4 And "ability levels," I don't think you
5 meant to use that. I think you probably meant to
6 use "achievement levels".
7 MS. AHRENS: Yeah.
8 MS. PODZIBA: Patrick?
9 MR. ROONEY: Let's try this again.
10 I think, Rita, your question may be
11 addressed further up if you look at line 18, which
12 is (B) number (2), which says that "The state
13 needs to insure that the assessment is valid and
14 accessible for use by all students, including
15 students with disabilities and English learners".
16 And then our peer review I think of
17 state assessments would then be where we look for
18 the state to demonstrate that the test actually is
19 meeting that requirement in providing a valid
20 score for all students.
21 So I think that may be the place to

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1 address your concern. I don't know if you feel
2 like it actually does, but I think that would be
3 my response to the point you're making in the
4 issue papers.
5 MS. AHRENS: I have one more take on
6 that.
7 MS. PODZIBA: Do you want me to not
8 call the question? I think there is dissent is
9 what I'm getting.
10 So, let me call the question, and then
11 if you want to bring it back, we can do that.
12 Ron, did you have one more comment?
13 MR. HAGER: Yeah. I just wanted to say
14 I agree with Rita's concerns. I just want to make
15 sure I understood what your point was, Patrick.
16 So the way you're reading line 18, "be
17 designed to be valid and accessible for use by all
18 students"... You see I don't read that language
19 "valid and accessible for use by all students" to
20 include getting at what Rita is talking about
21 here.

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1 Now, maybe when we get to the
2 provisions for the national assessments, you have
3 some language there that's a little different than
4 this. At some point I think we want to address
5 this and make it clear, you know, that we're
6 addressing Rita's point, but I don't know if this
7 is where it is. I'm just asking, the way you're
8 reading this "valid and reliable and accessible,"
9 you're reading this to say that would capture all
10 the ability levels? Is that what you said --
11 achievement levels. I keep saying "ability," too.
12 I meant achievement.
13 MR. ROONEY: The challenge I think in
14 Rita's question is -- I think the point Rita and
15 Ron are trying to make is that you're worried that
16 the test may not provide a valid and reliable
17 measure of what those students know and can do.
18 That's fundamentally what I think you're saying,
19 and if that is the case, then I would say that
20 that piece above does get at that point. Because
21 the state has to make sure it's designed to be

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1 valid and accessible for all students. And if
2 there are some students for which it's not
3 providing a valid score, then that would be a
4 concern -- the state would have to demonstrate
5 that it is, through peer review. And if it's not,
6 the state would have to identify what steps it
7 would take to address that concern as identified
8 by a panel of assessment experts who are reviewing
9 the documentation submitted by the state.
10 So, I think that gets to the point
11 you're making, Rita
12 MS. PODZIBA: So is there a dissent
13 from adopting this proposal?
14 Kerri? Ok.
15 Patrick, do you want to keep going?
16 Are there any other items on Page 1?
17 MR. ROONEY: I'll also mention we have
18 copies of the matrix. If anyone wants a copy,
19 we'll pass it around. Can you pass that to
20 Audrey.
21 MS. PODZIBA: I think we can go to

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1 Patrick. Page 2.

2 MR. ROONEY: All right, Page 2 --

3 MS. PODZIBA: Ron.

4 MR. HAGER: This is another thing we

5 talked about last time around. You maybe answered

6 this and I probably forgot.

7 It's on Page 2, line 14, "be consistent

8 with relevant, nationally-recognized, professional

9 and technical testing standards," and we wanted to

10 specifically include "including

11 nationally-recognized accessibility standards".

12 That was a concern that we had with a lot of the

13 state-wielded, computer-generated tests of all

14 different types.

15 I can't remember if you said that that

16 would be included in the definition of "technical

17 testing standards," but I wanted to flag that.

18 The concern is that it also be consistent with

19 nationally-recognized accessibility standards.

20 MR. ROONEY: Are there

21 nationally-recognized accessibility standards?

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1 MR. HAGER: Sure.
2 MR. ROONEY: Can you name them? I
3 think we might want to know a little bit more
4 about what those are before we --
5 MR. HAGER: I think it's the Web 3, the
6 web content standards. I think that's what we're
7 referring to. I probably don't have that in my
8 readily available mind, but I might be able to
9 find it. I think I left that book in my hotel
10 room.
11 MS. PODZIBA: Thomas, is your point on
12 Ron's --
13 MR. AHART: No.
14 MS. PODZIBA: Hold on. Any further
15 discussion on Ron's proposal?
16 Patrick --
17 MR. HAGER: It's also 508, and Section
18 508 is really the statutory provision.
19 MR. ROONEY: I think I'm less familiar
20 with what those standards are and what the
21 implications of using those are. So I think we

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1 may want to take a look at them and identify what
2 the implication would be of adding that to the
3 regulations, if that's ok.
4 MR. HAGER: Totally. We don't have to
5 flag it. We don't have to spend a lot of time on
6 it now, but I just wanted to flag it.
7 MS. PODZIBA: Tom.
8 MR. AHART: On roughly lines 10 through
9 13, the -- I'm trying to think of a word, the best
10 way to start, and I have so many points.
11 So it starts "with respect to
12 alternative assessments for students with the most
13 significant cognitive disabilities," "measure
14 student performance," yadda, yadda, yadda, yadda,
15 "of the Act," on line 8 there, "reflect the
16 professional judgment as to the highest possible
17 standards achievable by such students to insure
18 that a student" --
19 MS. RIGLING: Where?
20 MS. BECKER: He's using the tracked
21 changes version.

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1 MR. AHART: Oh, my bad.

2 Line 2, "reflect the professional

3 judgment as to the highest possible standards

4 achievable by such students to insure that a

5 student who meets the alternate academic

6 achievement standard is on track to pursue

7 post-secondary education or competitive integrated

8 employment, consistent with the purposes of the

9 Rehabilitation Act of 1973".

10 Just curious as to why that one element

11 of the Rehabilitation Act of '73 was cited, what

12 the intent was and not the other ones that further

13 elaborated.

14 MR. ROONEY: So to clarify your point,

15 Thomas, which I appreciate your reasoning, we

16 actually I think brought this up at the end of the

17 day on Monday and you asked for a copy of the

18 Rehabilitation Act.

19 MR. AHART: Yeah.

20 MR. ROONEY: So if you want to look at

21 that, I think the papers we handed out Thursday

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1 morning included, if I can get my binder open, a
2 one-pager that looks a little like this
3 (indicating), for those of you who are close and
4 can see it. At the top it talks about ESSA
5 1111(B)(1)(e), which is where this language that
6 Thomas has pointed to comes from the statutory
7 language about alternate academic achievement
8 standards.
9 And then below it is the Rehabilitation
10 Act of 1973, which is where we took this language
11 for competitive integrated employment.
12 And so you'll see, our intent with
13 doing this is that the statute just references
14 that the assessment needs to be aligned to that
15 the "student is on track to pursue post-secondary
16 education or employment consistent with the
17 purposes of Public Law 93112, which is the
18 Rehabilitation Act.
19 In our proposed regulations we wanted
20 to clarify the purposes of Public Law 93112 and
21 just use the -- pull the language in from that

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1 law. So you can see the purpose is laid out here
2 in (B) on the bottom of this page and then onto
3 the back of the other page, and we focused on the
4 competitive integrated employment because we think
5 that is the primary purpose of the Rehabilitation
6 Act, so we wanted to focus on that one rather than
7 include all of the purposes.
8 MR. AHART: It seems like they were
9 referring maybe more broadly to the other purposes
10 as well. I was just wondering, if you go up to
11 the professional judgment, you know, the
12 practitioners, if that gives them a better ability
13 to serve students, if they could look at the
14 broader purpose of the Rehabilitation Act instead
15 of just that one item.
16 MR. ROONEY: So if it's okay, I'd like
17 to ask my colleague, Ruth Ryder, who is the
18 director of the Office of Special Education
19 Programs, who I think can talk more knowledgeably
20 about the Rehabilitation Act better than I can.
21 She can give our rationale for that.

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1 MR. AHART: Thank you.

2 MS. RYDER: So in looking at this, we

3 felt like, you know, the two new purposes that

4 were put into the Rehab Act with the

5 reauthorization of the Work Force Innovation and

6 Opportunity Act, and we felt like they were really

7 kind of the crux of the WIOA and the Rehab Act,

8 and rather than putting in all of the purposes, we

9 could get the focus that we wanted with putting in

10 the competitive integrated employment.

11 MR. AHART: I believe that gets to part

12 of it. I'm just curious if Congress didn't

13 specify that in particular, what the need would be

14 for limiting it, if that makes sense.

15 MS. RYDER: We felt like the reference

16 to 9312 didn't really give kind of the descriptive

17 nature that we wanted in there with the focus on

18 competitive and integrative employment.

19 And if you look at the other purposes,

20 they're all focusing on preparing youth and adults

21 with disabilities for competitive integrated

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1 employment.

2 MS. PODZIBA: Let me get some other

3 voices in here.

4 Ron.

5 MR. HAGER: Yeah, if you look at the --

6 again, this is like the color-coding scheme. So

7 the reason why I think they chose that one purpose

8 is, if you look at the blue, so Congress, when

9 they chose what sections to focus on from WIOA,

10 they said post-secondary education and employment.

11 So those are the only two that they focused on.

12 So then when you look at what does WIOA say about

13 employment, it is full of competitive, integrative

14 employment.

15 MS. RYDER: Right.

16 MR. HAGER: So it's really trying to

17 fit what did they mean by "employment consistent

18 with WIOA," but what they mean by "employment

19 consistent with WIOA" is not that they guarantee

20 it, but they're preparing students to pursue

21 competitive integrated employment.

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1 That's why that purpose down at the
2 bottom of the thing that we received from the
3 Department, "to maximum opportunities for
4 individuals with disabilities, including
5 individuals" -- and this is all related -- "with
6 the most significant cognitive disabilities."
7 There's four competitive integrated employments.
8 So that is the one thing that is -- to
9 make it consistent with WIOA, you have to put in
10 that competitive integrated when you talk about
11 employment.
12 I don't want to speak for the
13 Department, but I'm assuming that that's where
14 they were going.
15 In fact, the other point about this is,
16 effective this summer, students that are
17 transitioning from schools to adult services will
18 not be allowed to go into sheltered workshops
19 unless a whole series of things are done. So
20 that's really -- all of this is why -- I think
21 that phrase "competitive integrated employment" is

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1 one that was selected because that is such an
2 important piece of it.
3 MS. PODZIBA: Thomas, hang on. I'm
4 going to get Lynn's comment.
5 MS. GOSS: I was just going to comment
6 on just how limiting the competitive integrated
7 employment could be. A lot of the students that I
8 worked with in the past are gainfully employed,
9 but I wouldn't say it would probably be covered
10 under that competitive integrated employment.
11 And so, maybe I'm not understanding it
12 correctly, but I would think that that would be
13 severely limiting to some of the students I've
14 worked with in the past.
15 MS. PODZIBA: Ruth, do you want to
16 respond?
17 MS. RYDER: By "gainfully employed" do
18 you mean they're working at minimum wage?
19 MS. GOSS: Some of them, yes.
20 MS. RYDER: Ok. Well, that would be
21 what "competitive" would mean. "Competitive"

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1 means that they're working at minimum wage.

2 MS. GOSS: Then some of them no.

3 MS. RYDER: Well, the point of this is

4 this is our goal for all children and youth, that

5 they are working towards having a job at minimum

6 wage in an integrated environment.

7 MR. ROONEY: I just want to make the

8 point that Ruth just made is that, this section

9 which starts on the bottom of Page 1 and then goes

10 to the top of Page 2 is talking about the state

11 setting the highest possible standards for this

12 group of students taking the alternate assessment,

13 reflecting the professional judgment and insuring

14 the highest possible standards for these students,

15 that that would be kind of heading it toward that

16 competitive and integrated employment as the goal

17 or expectation for those kids.

18 MS. PODZIBA: Thomas, did you have

19 another comment?

20 MR. AHART: Yeah. I guess I would just

21 say that reflecting professional judgment and then

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1 saying that -- implying that this is what your
2 judgment ought to equate to feels unnecessarily
3 restrictive. But I appreciate your point, where
4 we all are working towards that.
5 MS. PODZIBA: Ron?
6 MR. HAGER: Yeah, I mean, the qualifier
7 I guess is professional judgment to what, and in
8 terms of the phrase "consistent with WIOA," it's
9 professional judgment toward competitive
10 integrated employment. Because that's where the
11 change is from the gainful employment in the prior
12 law to this new phrase, "competitive integrated
13 employment in WIOA".
14 MS. PODZIBA: Ryan?
15 MR. RUELAS: No.
16 MS. PODZIBA: Ok, can we keep going?
17 Anything else on Page 2?
18 Rita?
19 MS. AHRENS: On line 21 I'd like to add
20 after states "website and in alternate modes,"
21 because not everyone has access to the Internet.

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1 MS. PODZIBA: Patrick?

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

3 have any concern with that language, other than

4 the statute, the new ESSA language says that it

5 has to be made available to the public, including

6 on the state's website.

7 So this would be adding an alternative

8 method to meet that requirement in the law. I'm

9 open to discussion on that suggestion.

10 MS. PODZIBA: Ok, discussion on that

11 subject.

12 Audrey.

13 MS. JACKSON: To clarify, Patrick,

14 Congress wrote that they have to make it

15 available, and when you just said "including on

16 the website," that doesn't mean only on the

17 website. Is that correct?

18 MR. ROONEY: So I can try to find the

19 statute for you in one second, but I believe it

20 actually says "is made available to the public,

21 including on the state's website".

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1 So that would mean not solely limited
2 to the state's website, but it has to be on the
3 state's website, is how I would read that.
4 MS. JACKSON: So if it is accurate,
5 then I would think that -- was it Rita?
6 MS. AHRENS: Mm-hmm --
7 MS. JACKSON: Whoever brought it up,
8 then it's almost like an additional we're adding
9 it on.
10 MS. PODZIBA: Aaron.
11 MR. PAYMENT: So I know I was
12 advocating for mode earlier. But I think this is
13 appropriately mean.
14 MS. PODZIBA: Kerri.
15 MS. BRIGGS: This is an area where I
16 was getting lost on what's modifying what.
17 Actually the phrase that Rita just --
18 the clause that Rita just highlighted, what's
19 being made available? I'm lost.
20 MS. JACKSON: Evidence.
21 MS. BRIGGS: Evidence. Which evidence?

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1 MR. ROONEY: Right, it's number (5).
2 If you look at line 16 is the stem.
3 MS. BRIGGS: Ok, thank you.
4 MR. ROONEY: And all of (5) is coming
5 from (B) if you go back to Page 1, Line 12. So
6 it's the assessments required under the section
7 "Must," and then all of the alpha numeric numbers
8 follow from that.
9 MS. BRIGGS: So the evidence that
10 explains all that stuff is the stuff.
11 MS. PODZIBA: Any further discussion of
12 this proposal? Rita I think you accepted a
13 friendly amendment?
14 MR. PAYMENT: Maybe "through alternate
15 means," "and alternate means".
16 MS. PODZIBA: Ok, so do we have a
17 proposal as you like it, "and alternate means"?
18 Rita, that's ok with you?
19 MS. AHRENS: Yes.
20 MS. PODZIBA: Any dissent from adopting
21 that proposal?

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1 Kerri?

2 MS. BRIGGS: Not dissent, just

3 clarifying. By calling it plural, I want to

4 understand -- Tony, I'm asking this of your staff

5 and people -- I've never been in a state agency

6 before, are we making this available to the

7 public? It's in paper form somewhere. That's

8 available in public?

9 MR. EVERS: It sounds to me that we've

10 now added another --

11 MS. BRIGGS: Another provision. I just

12 want to understand how many ways we're making this

13 available to the public.

14 MR. EVERS: Yeah, and I don't want to

15 be insensitive, but to me the idea that it's being

16 made available to the public gets -- it's either

17 made available to the public or it's not, and if

18 some of the public doesn't have access to the

19 website, we'll find a different way of doing it.

20 I understand the need to be absolutely

21 precise, but to me the way it was is fine. I'm

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1 not going to spend any time arguing, but as it
2 says right there, now we're going to do it two
3 degrees over this.
4 MS. PODZIBA: Aaron?
5 MR. PAYMENT: So I guess just a
6 clarification.
7 I think maybe we need something to
8 modify it, so it's -- it's at least the website,
9 and it could be alternate means, but some people
10 collect information through different ways, and so
11 a website is not the only way, but of course you
12 would want it be to made available through
13 alternate means, and we would leave that up to the
14 states to decide what alternate means is.
15 MS. PODZIBA: Audrey?
16 MS. JACKSON: I just want to repeat
17 what we clarified before, that this is -- the
18 reason why it says "website" is because in the
19 statute it says you have to make it publicly
20 available, including on the website. So it's all
21 ready stated that it's on the --

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1 MS. GOSS: It has to be available some
2 other way.
3 MS. JACKSON: Some other way. So I
4 feel like we're belaboring it.
5 MS. PODZIBA: So I need to ask the
6 question. Is there a dissent from adding this?
7 Lynn?
8 MS. GOSS: No.
9 MS. PODZIBA: Ok, other items on Page
10 2?
11 MS. JACKSON: Hold on, not all of that.
12 MS. PODZIBA: No.
13 All right, any other items on Page 2?
14 Ok, Patrick. I think there's probably
15 something you want to say with Page 3.
16 MR. ROONEY: There is. Good
17 prediction.
18 MS. PODZIBA: It's the red.
19 MR. ROONEY: There's big red text on
20 Page 3 that we haven't talked about yet. And we
21 did talk about these two weeks ago about this

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1 particular provision, and we tried to address that

2 concern by adding in what is here in red.

3 Just to step back one second to remind

4 you, in ESSA, there is a new reporting requirement

5 which is not part of the statutory text that we

6 are focusing on for this regulation that says, "in

7 addition to the typical categories that states

8 provide data on, they also have to provide data on

9 homeless children or youth, status as a child in

10 foster care, and status as a child with a parent

11 who's a member of the armed forces on active

12 duty".

13 Because of that requirement, that it

14 has to be part of the reporting system for the

15 state and for districts, we added into this draft

16 regulation that the assessment -- the state needs

17 to insure that the assessments can provide data on

18 these groups of students, so that way they can

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19 meet that reporting requirement later. That's

20 just that background for you.

21 And "status as a child in foster care"

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1 was not defined, and in our discussion two weeks
2 ago, there was discussion that we define it so it
3 was clear what that is.
4 We have defined it here, and I will
5 actually tell you that this definition comes from
6 the Department of Health and Human Services and
7 the definition that they use for "status of a
8 child in foster care," to be consistent with
9 what's being used there, and to make sure that
10 we're not creating a new and different definition
11 that states then have to -- and districts have to
12 respond to. So that's where this language came
13 from.
14 MS. PODZIBA: Ok, yes.
15 MS. KING: Just a friendly request.
16 Can you say title (4)(b) of the Social Security
17 Act? I think it may be confusing that it's
18 referring to title (4)(b) of this law.
19 MR. ROONEY: That's reasonable.
20 MS. PODZIBA: Audrey?
21 MS. JACKSON: First of all, I want to

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1 say thank you very much for putting this in, and I
2 have two clarifying questions...
3 One, is that the child is in one of
4 these situations at any time during the school
5 year for like -- you know, I have students who
6 fall into different categories at different times.
7 So I mean, I don't want to be really
8 prescriptive and say "for a minimum amount of
9 time" or something like that, or is it at any time
10 in their youth? That's one question.
11 The second is in the previous, in
12 romanette (vii). I believe it's supposed to be
13 Section 725, not Section 752. When I was looking
14 it up I couldn't find this Section 752, but it
15 seems to be referring to the definitions in
16 Section 725.
17 MR. ROONEY: I think you're right on
18 the second point, Audrey. We'll confirm, but I
19 think that was a typo on our part that we may have
20 had last time that I think we didn't catch. I
21 think it's Section 752.

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1 MS. JACKSON: I have it on my phone.

2 MR. ROONEY: Do you have a proposal for

3 romanette (viii)?

4 MS. JACKSON: It could say, a child in

5 foster care -- "status as a child in foster care

6 during any" -- "for any period of time in the

7 given school year". I don't know if that's too

8 vague. I'd like to hear from state leaders if

9 that's really challenging, but I think that

10 there's --

11 MS. PODZIBA: Liz, do you have a

12 comment on this?

13 MS. KING: Yes. My advice would be not

14 to answer this question. Within our foster care

15 advocacy community there's been a lot of

16 conversation about this, because there's a lot of

17 different merit to different ways of doing it.

18 And so I think that folks are still working on

19 that.

20 Because this is primarily governed by

21 the reporting section, I'd rather it got repped

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1 that way instead of being in Guidance.
2 So my preference would not to address
3 that piece of it, although I certainly understand
4 why that's relevant.
5 MS. JACKSON: Wait, can you say that
6 again. Where would it be covered?
7 MS. KING: So outside of 1111(B)(2) is
8 the actual requirement, right? The reporting
9 happens elsewhere -- there is a different part of
10 the law that also talks about reporting around
11 children in foster care.
12 So, my preference -- I mean, either
13 way, my preference would be not in this regulation
14 to define that, just because I want to be very
15 careful. Since this is a really great opportunity
16 for new data, I want to make sure we're getting
17 the data we want about the children we want. So
18 I'd rather not do it in this regulation.
19 MS. JACKSON: One other question then.
20 It seems to me a child could easily overlap
21 between (vii) and (viii).

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1 MS. RICKER: Yes.

2 MR. ROONEY: I think you're probably

3 right. I think our response to that would be

4 there are oftentimes kids are in multiple

5 categories and they're reported in whatever

6 category that they fit in. There is oftentimes

7 kids are more than one race, or kids are also a

8 race and they have a socioeconomic status. So

9 when they report that information, they report it

10 for whatever categories that they would fall in.

11 MS. JACKSON: Ok, that's great.

12 I think the other categories report

13 much more easily. Like I'm clearly a Caucasian

14 female. It's a lot easier to see that it's two

15 buckets, but this is where I think people would be

16 tempted to pick one.

17 I don't think you have to change

18 anything. I'm just stating it as a note perhaps

19 for Guidance.

20 MS. RIGLING: Let me bring this back

21 to -- this provision is actually a requirement

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1 that state assessment data must be able to be
2 disaggregated by these categories. So I think
3 what that means is that the state, in designing
4 its assessment system, has to have a way of
5 flagging these kids.
6 I think we don't want to get ahead of
7 ourselves here in what rules either HHS has for
8 how these kids are reported or what we might do in
9 either Regs or Guidance about the report card,
10 which is really where this requirement is that we
11 pulled from, because they can't report
12 disaggregated data on these kids if the assessment
13 system can't provide them that data.
14 So, I guess I'm saying I'm not sure we
15 want to be too prescriptive here, because we
16 definitely need to be consistent with what other
17 agencies are doing, but also what the report card
18 Guidance might say on this.
19 And I just don't know if maybe this is
20 something that they're leaving up to states to
21 determine when you would determine the status of a

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1 child in foster care. I don't know the answer to
2 that.
3 MS. JACKSON: Ok.
4 MS. PODZIBA: Rita?
5 MS. AHRENS: I just have a quick
6 comment on this.
7 In recognition that some foster care
8 kids are going in and out, my brother actually has
9 foster kids that he takes care of, and he might
10 not see them for a year or two and they come back
11 to him.
12 So I wonder if, wherever it is that we
13 are defining somebody as a foster care child, and
14 we are then looking at the reporting requirements,
15 you know, similar to how we include former
16 English-language learners in the current English
17 learner category for reporting purposes, I think
18 we should take a look at using that same standard
19 and consistency.
20 MS. JACKSON: Ok, I second that and
21 appreciate it.

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1 MS. PODZIBA: Kerri?

2 MS. BRIGGS: "Where in the law," I

3 think that's an error. "Issues around privacy for

4 students and/or families, particularly with foster

5 kids". Is there a cross reference somewhere? Is

6 that in the statute, privacy issues?

7 MR. ROONEY: There is a requirement in

8 the statute that we make sure they're not

9 providing personally identifiable information.

10 That would cover all of Title I. I don't think

11 it's in the regulations we proposed, unless I'm

12 forgetting that it's in here somewhere. I think

13 it is covered.

14 There is a 200.7 regulation, which is a

15 lot about the accountability system, and we'll

16 talk about it and we can get a little bit further

17 into this issue paper that covers -- to make sure

18 that there is the clarification for insuring

19 you're not personally identifying -- providing any

20 personally identifiable information and you're

21 consistent with the privacy laws that is not

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1 covered in these regs, but is certainly something
2 that we are very much aware of and try to
3 maintain.
4 This is just about making sure that the
5 assessment system can provide data for these
6 groups of kids, which is why it's not here.
7 MS. PODZIBA: Liz?
8 MS. KING: Yeah, I just wasn't sure
9 about the status. I would like to take this text
10 out. Are we -- sorry, I didn't know where we were
11 on this. I felt like we were moving on.
12 MS. PODZIBA: You want to take out this
13 definition?
14 MS. KING: No, no. The "for any period
15 of time in the given school year" is my request.
16 MS. PODZIBA: Yeah, I think that's --
17 MS. JACKSON: Yes, that's fine.
18 Because we talked about how it's being covered and
19 addressed. That's totally fine.
20 MS. PODZIBA: Janel?
21 MS. GEORGE: Just to Kerri's point, I

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1 think FERPA would still apply here as well for the
2 privacy.
3 MS. PODZIBA: Tony?
4 MR. EVERS: Number (ix).
5 MS. PODZIBA: Number (ix)?
6 MR. EVERS: Does the definition of
7 "armed services" include National Guard? Does the
8 definition --
9 MR. ROONEY: Yes, I heard you, Tony.
10 That was the next thing I was going to say.
11 I have confirmation, Audrey, to your
12 question on line 17, 752 should be 725. So thank
13 you for catching that for us. I appreciate that.
14 And then romanette (ix), starting on
15 Line 32, this is a requirement that the assessment
16 system need to be able to aggregate data for
17 students who have a parent who is a member of the
18 armed forces on active duty. You can see the
19 citations which we took directly from the ESSA as
20 defined in 10 US Code 101(A)(4) and 101(D)(5).
21 That is actually what's in the statute. 101

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1 (D)(5) is the National Reserve. It is not
2 correct. We actually think it should be
3 101(D)(1), which then is the armed services or the
4 armed forces.
5 So that is a change that we were going
6 to propose making here and that we want to adopt
7 that change, that clarification. It is supposed
8 to be just the active duty and the armed forces,
9 not the Reserve Guard.
10 MR. EVERS: So it does not include
11 National Guard?
12 MR. ROONEY: Correct.
13 MR. EVERS: Thank you.
14 MS. PODZIBA: Audrey?
15 MS. JACKSON: Just to confirm that
16 also -- I know we've confirmed this before, but
17 "parent" here also does refer to the legal
18 guardian or care provider?
19 MR. ROONEY: That's correct.
20 MS. PODZIBA: Lisa?
21 MS. MACK: I just want a clarification

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1 on it not being National Guard. And I'm confused
2 with the coloring now at this point. The blue is
3 the regulation, not the statutory language?
4 MR. ROONEY: Other way around. The
5 blue is the statutory language. So the statute
6 says 101(D)(5), which would then mean "parents on
7 active duty and Reserve Guard". We think it
8 should be 101(D)(1), which would be "active duty
9 in the armed forces," which is what, if you look
10 at the language in the statute, it's referring to.
11 MS. GOSS: So why are they changing it?
12 MS. MACK: I'm just curious as to why.
13 I know that there are some issues with
14 self-identification in often military families,
15 that if a reserve person is actually -- I can't
16 think of the word --
17 MS. PODZIBA: Active duty?
18 MS. MACK: -- deployed, then they are
19 considered military. I know there's that effort
20 in Ohio.
21 MR. ROONEY: So I think at that point

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1 they would be on active duty to be pulled into the
2 armed forces once they are being deployed
3 somewhere. But that might be a little out of my
4 depth of actually how the terms are used with the
5 different offices.
6 MR. EVERS: We have thousands of
7 Wisconsinites in the National Guard that are
8 deployed all across the world, some of them single
9 parents, and I can't imagine us not including
10 them. It seems irrational.
11 MS. PODZIBA: So, Patrick, you're
12 saying that the change that you made is what the
13 statute has? It has (D)(1)?
14 MR. ROONEY: No. The statute says
15 (D)(5), and if we keep it at (D)(5), then it would
16 be just the reserves. It would not be actual
17 parents on active duty in the armed forces.
18 So that's why we think it should be
19 (D)(1) and not (D)(5), which is why we're
20 proposing that change.
21 MS. PODZIBA: So I think there's some

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1 pushback and I wonder if it's an "and". Is that
2 what I'm hearing from people, that you want it to
3 be (D)(5) and (D)(1)?
4 MR. EVERS: I think so, yes.
5 MS. PODZIBA: So a proposal to leave
6 leave (D)(5) and the proposal would then be to add
7 (D)(1). Let's make sure we have all those
8 citations correct.
9 MR. ROONEY: So I was just given a
10 note. So this is helpful having colleagues with
11 me. They ask that I make clear that this was an
12 error in the statute. The statute actually meant
13 to be (D)(1) is what I'm being told, and they did
14 (D)(5) in a drafting error.
15 MS. JACKSON: But if we're writing
16 Regulation, are we prohibited from doing that. It
17 was in the Regulation, not --
18 MR. ROONEY: Your question is whether
19 you can include them both, even if there was a
20 drafting error in the statute? I might need to --
21 that's why it's good to have an attorney sitting

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1 next to me. We might need to get back to you on
2 that. I don't know if Kay has anything she wants
3 to add.
4 MS. JACKSON: I'd say at the minimum,
5 perhaps in Guidance, states could be advised that
6 they could, at their discretion, include both.
7 MR. ROONEY: So this is a list of what
8 the states have to do, right? So I think what
9 we're proposing is that it would be 101(D)(1),
10 which would be parents on active duty in the
11 around forces, that they have to make sure their
12 data can disaggregate for that.
13 It would not preclude them from doing
14 additional information if they wanted to. This is
15 what the minimum is required under the statute and
16 the Regulations.
17 MS. PODZIBA: So it sounds like people
18 are proposing the addition. Do you need to take
19 that back and get back to everybody about that?
20 MR. ROONEY: I think I do.
21 MS. MACK: I just have a clarifying

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1 question. What is 101(A)(4).

2 MS. RIGLING: The definition of

3 101(A)(4) is the definition of active duty.

4 MS. PODZIBA: So, Patrick, I think

5 there's some confusion. Maybe you can just walk

6 through that line again and let people know what

7 those citations refer to.

8 MR. ROONEY: So I believe 101(D)(5)

9 is --

10 MS. PODZIBA: Starting with (A)(4).

11 MR. ROONEY: I don't know what

12 101(A)(4) is doing. We're looking it up right

13 now.

14 101(A)(4) is the armed forces, and then

15 101(D)(1) is the active duty in the armed forces,

16 and 101(D)(5) would be active duty in the

17 reserves.

18 MS. PODZIBA: Ron?

19 MR. HAGER: So I think the phrase

20 "armed forces in active duty," I mean, I think

21 what Tony and I have been kind of talking back and

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1 forth here is we want to try and capture people
2 who are in active duty.
3 And then we also would want to
4 consider, and I'm just going to propose it, the
5 National Guard. You have people that are on
6 active duty that might be on reserve that are
7 called up that are in regular military that are on
8 active duty, and then the National Guard that may
9 be called up to active duty.
10 The regular army is the (D)(1), and
11 then they have got the National Guard and the
12 reserve, and the modifier is active service,
13 right?
14 So I think that's what Tony's
15 suggesting.
16 MR. EVERS: They're over there.
17 MR. HAGER: They're over there.
18 MS. PODZIBA: So it's National Guard
19 that have been called up?
20 MR. HAGER: Right, for the active duty
21 piece.

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1 MS. PODZIBA: So, Patrick, maybe we'll
2 ask you to take that back and get back to us on
3 that.
4 Mary Cathryn.
5 MS. RICKER: Thank you.
6 I just wanted to ask actually on line
7 nine, the definition of how we would determine a
8 "migratory child".
9 MR. ROONEY: So that is defined in
10 section -- so we just are using the definition
11 elsewhere of the ESSA and we provide the citation
12 for what that is, so we're trying to be consistent
13 with the other parts of the law that uses the same
14 definition.
15 MS. RICKER: And so just confirming
16 that determining the status of a migratory child
17 in no way would need to request their immigration
18 status?
19 MS. RIGLING: I think that's right.
20 "Migratory child" refers to the child of a
21 migratory agricultural worker or a migratory

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1 fisher.

2 MS. RICKER: Yep.

3 MS. RIGLING: So I think it's really

4 the vocation of the parent that defines who a

5 migratory child is.

6 MS. RICKER: So there would be no

7 reason a district would ever have to ask a child

8 what their immigration status is.

9 MS. GEORGE: That's contrary to the

10 law.

11 MS. PODZIBA: Anything else on Page 3?

12 So, Patrick, do we now move to Page 8,

13 because the rest of this --

14 MR. HAGER: Page 4?

15 MS. PODZIBA: No, I think the rest of

16 this has been discussed under Issues.

17 MR. ROONEY: There is one thing that I

18 wanted to flag on Page 5, just because I don't

19 think I've mentioned this before.

20 So I think it's good for me to mention

21 now, that 200.3, which we spent a lot of time

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1 talking about yesterday, and I don't want to go
2 into the content, the text within this page and
3 what's here on 200.3, but there is a note at the
4 top on line one that this is removing and
5 replacing the current text of 200.3. So I just
6 wanted to flag that for the group's consideration.
7 A lot of what was in 200.3 we think
8 either is no longer relevant or we moved it into
9 200.2 to reorganize a lot of the components around
10 the design of the assessment system.
11 So 200.3 used to be called the
12 Assessment System Design, I believe. It seemed
13 like they had split out a lot of the requirements
14 for Assessment and we tried to put all of the ones
15 that we felt were relevant in 200.2 and then
16 delete the others that we thought were not
17 relevant.
18 MS. PODZIBA: Ron?
19 MR. HAGER: I thought yesterday we had
20 talked about coming back to this when we looked at
21 Issue Paper 6 about if there's any provisions in

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1 this part on Page 5 for states that are selecting
2 the nationally-recognized assessment that we don't
3 have in the general part of 200.2.
4 One of the things in particular was the
5 one about the assurances that we had come up with
6 as part of our package yesterday.
7 MS. JACKSON: Yes.
8 MR. HAGER: And the second one is some
9 of the stuff about the comparable data for all
10 high school students in each subgroup and that the
11 consistent -- "provides rational consistent
12 differentiation". Some of the language from (3)
13 that applies to "locally-selected," we were
14 wanting to consider if the state selected the same
15 test, that it really be consistent with the intent
16 of the, you know, ESSA requirements; that it
17 should apply to both groups.
18 This is a type of test, whether it's
19 selected by the local school district or if it's
20 being used by the entire state. We talked about
21 looking at and making sure that the criteria would

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1 be consistent.

2 MR. ROONEY: So, Ron, could you clarify

3 what language you are proposing and where you

4 would propose for it to be, to help us understand

5 your request.

6 MR. HAGER: From Issue Paper 3

7 yesterday, it would be (B)(1) romanette(v)(A)(B)

8 and (C), and then (B)(2) romanette (i) as modified

9 yesterday. That's the provisions. And then

10 somewhere up in -- somewhere in (A)(3) probably

11 would be the place to put it, and I'm sorry, I had

12 it here, but I had it behind a different page.

13 MR. ROONEY: Sorry, it sounds like

14 you're saying romanette (v), which starts on line

15 34 of Page 5 of this package that we're looking

16 at. I'm trying to keep us from trying to jump

17 around too much.

18 MR. HAGER: Yes.

19 MR. ROONEY: Around "producing valid

20 and reliable data on student achievement

21 comparable for all high schools and subgroups in

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1 the state are expressed in terms consistent with
2 the achievement standards and provide unbiased,
3 rational and consistent differentiation among
4 schools".
5 I do think those are covered in the
6 existing 200.2. I think, because the state has to
7 demonstrate that the tests, all its tests are
8 valid, reliable, fair and accessible, and that by
9 being the same test for all high school students,
10 they must then be comparable for all high
11 schoolers taking that test.
12 We added this language about it being
13 comparable in 200.3 because this is a case where
14 you have some kids in the state taking a different
15 high school test than is the state's test, if they
16 have done a locally-selected,
17 nationally-recognized assessment. So therefore we
18 have that extra piece in there.
19 If there is something in particular you
20 don't see in 200.2(B) and you've got a suggestion
21 on where to put it, I'm definitely open to it.

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1 MR. HAGER: Definitely that language
2 around the parent, the (2), the language about
3 (B)(2) that we modified yesterday, that should
4 apply whether it's the school district that's
5 selecting the test or the state that's selecting
6 the test. That's definitely not reflected in the
7 general provisions of 200.2.
8 I'm not sure where it would fit, but --
9 MR. ROONEY: Sorry, I'm not sure I'm
10 following what provision on (B)(2) you mean. Can
11 you just help point me to the right line or
12 language?
13 MS. JACKSON: I think this is from
14 yesterday when we talked about the fact that
15 whatever entity is administering or selecting the
16 test has to, on behalf of the child, insure that
17 their accommodations are met. The family doesn't
18 have to do it.
19 So this is all stuff we worked on
20 yesterday which will be included. Is that
21 correct? You're just trying to make sure it is?

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1 MR. HAGER: Right.

2 MR. ROONEY: So I get it. So the

3 language we talked about around the accommodations

4 not providing a different benefit to some kids

5 than other kids --

6 MS. JACKSON: Yeah.

7 MR. ROONEY: -- which doesn't sit in

8 200.2. It's also in 200 -- actually it might be

9 200.6 is where it appears, where we talked about

10 that requirement, because that's where we talked

11 about including English learners and students with

12 disabilities in the assessments.

13 We incorporated it in Issue Paper 4 and

14 Issue Paper 5, (4)(A) and 5(A). Whatever language

15 we ended up with presumably in 200.3 we would make

16 it consistent in 200.6. But that's where it will

17 fit is in 200.6 when we get there. Maybe I didn't

18 see it.

19 MR. HAGER: So if you take the language

20 that we put in from 200.3 yesterday, if you put

21 that in consistent -- that language in in 200.6,

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1 yes, that would work.

2 MR. ROONEY: In the language about the

3 new red paragraph, which, if you're looking at the

4 full package, shows up on Page 6, starting on line

5 three.

6 MR. HAGER: Right. We're substituting

7 the text from the Issue Paper 3 in there --

8 MR. ROONEY: Right.

9 MR. HAGER: -- and then we will take

10 that same text and put it into 200.6.

11 MR. ROONEY: I don't know that we asked

12 for a consensus on that yesterday. Now I'm

13 blanking there's been so many discussions.

14 MS. PODZIBA: Yeah, I think it might be

15 easier, Ron, when we come back to have the last

16 version and we have the actual --

17 MR. HAGER: Again, this is something we

18 left open and we wanted to make sure we discussed.

19 We don't have to deal with it right now. But I

20 just wanted to again flag it.

21 MS. PODZIBA: I would just say,

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1 Patrick, when you are redoing the issue papers, it
2 becomes clear where it should go, maybe you can
3 just put that in and then we'll go over that to
4 make sure that's taken care of.
5 MR. ROONEY: Yeah, that makes sense.
6 MS. PODZIBA: Lynn?
7 MS. GOSS: As she was going back and
8 forth up on there, I noticed that the "competitive
9 integrated employment," that "competitive
10 integrated" was still in there, and I thought that
11 we wanted to strike that.
12 MS. PODZIBA: No. I thought there was
13 a discussion and then there was an understanding.
14 That is how I understood the conversation. I
15 don't believe there was ever a proposal to remove
16 it.
17 MS. GOSS: I just think that it would
18 be a disservice to some of the students. I mean,
19 that's always our goal, but I think that it's
20 going to be a disservice to the students.
21 MS. PODZIBA: Aaron?

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1 MR. PAYMENT: I guess I don't
2 understand that. Isn't it expected to be a higher
3 standard that meets their needs rather than
4 basically employment?
5 I mean, I have a nephew who I think, if
6 we would have had an expectation for gainful
7 employment, now defined as "competitive
8 integrated," he wouldn't have gone on to college.
9 I think he would be working at the sheltered
10 workshop today.
11 So I think it's just the opposite. My
12 opinion is just the opposite of what you're
13 saying. I think that unduly limits them and
14 diminishes the expectation of what they can
15 achieve. He has a college degree now with a 3.5
16 GPA.
17 So I think in my opinion, as a parent
18 or someone who has helped parents, that it's just
19 the opposite. So I don't understand.
20 MS. PODZIBA: Lynn, is that ok to keep
21 going forward?

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1 MS. GOSS: Yes.

2 MS. PODZIBA: Ok. Patrick?

3 MR. ROONEY: So jumping ahead to Page

4 8, this is the State Law Exceptions, and this text

5 is all in black text, which means this is our

6 current regulations that are in place and affect

7 now, and we are not proposing any changes to them.

8 MS. PODZIBA: Any questions about that?

9 MR. ROONEY: And then we can also talk

10 about the top of Page 9. It's just lines one

11 through 14 are new -- sorry, they're not new.

12 They're actually not changed from what you saw two

13 weeks ago. They are not new. Although there's

14 some bold blue here where we clarified the

15 language in the statute slightly to be a little

16 more unspecific, but this is just essentially

17 saying what grades the states need to have

18 assessments, and that the states may have other

19 subjects, if they so choose, but they are not

20 required to.

21 MS. PODZIBA: Ron.

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1 MR. HAGER: I just have a friendly
2 technical amendment proposal. If you look at
3 (A)(1), "A state must administer the assessments
4 under 200.2 annually as follows," and because it
5 was really based on old language, we had this
6 exception for science and all that, I think if you
7 cross out "annually" there and put in the
8 "annually" under romanette (i)(A)...
9 So it would be "annually in each of
10 grades three through eight and at least once in
11 grades three through twelve".
12 So the science tests are done annually,
13 but maybe that's ok.
14 MR. ROONEY: Sorry, I think the
15 "annually" is referring to how often the test
16 needs to be administered, which means every year.
17 MR. HAGER: I'll withdraw it. Sorry.
18 MS. PODZIBA: Ok, all right. Anything
19 else on Page 8 and 9, top of nine?
20 Richard?
21 MR. POHLMAN: On the top of nine, at

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1 lines 13 and 14, the bold, is that just scrubbed
2 to add statutory language? So that with respect
3 to "any other subject chosen by a state, the state
4 may administer the assessment at its discretion"?
5 Is that the statute".
6 MR. ROONEY: Yes, I believe that's
7 right.
8 MR. POHLMAN: Is there any way to add a
9 clause at the end, "consistent with state and
10 local law"?
11 I mean, I don't think this can expand a
12 state's right to require additional assessments if
13 that conflicts with local law. It may otherwise
14 limit their abilities.
15 That's probably clear here, but I can
16 see state offices maybe using it in that
17 direction. I don't know if it's possible.
18 MR. ROONEY: We can have a discussion
19 on that proposal.
20 MS. PODZIBA: Discussion on that
21 proposal?

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1 MS. GEORGE: I'm sorry, I was a little
2 confused. Are you saying the state law would
3 supersede? I guess I'm just asking for clarity.
4 Are you saying the state and local law conflict,
5 Richard?
6 MR. POHLMAN: What I am saying is that
7 if there is a state law, for instance, that limits
8 the authority of the state to test in non --
9 what's the language? Non-core subjects, sorry,
10 but the state then proposes in support of this
11 provision to say, Actually we have the authority
12 to test for a statewide assessment for PE, for
13 instance, that this could not be used to support
14 that if it contradicted local or state law.
15 It's late. I'm not being clear, so I
16 apologize.
17 MS. RICKER: I get it.
18 MR. ROONEY: I would say the word "may"
19 in this number makes that maybe unnecessary. I
20 don't know that we have a stance on whether it
21 gets included or not, but this is just the state

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1 may interact, the state has to -- there is no
2 requirement that the state do this. But also, I
3 don't necessarily --
4 MR. POHLMAN: Yeah, I just read it as
5 sort of providing this ultimate flexibility for a
6 state to decide, Any other subject chosen, you may
7 administer the assessment at your discretion.
8 MS. RIGLING: I think maybe where this
9 is coming from is that there is a statutory
10 provision that says the state has to administer
11 assessments in at least reading, math and science.
12 Then it says "The state retains the right to
13 implement such assessments in any other subject
14 chosen by the state".
15 I think this provision is saying, if
16 the state chooses another subject, it can
17 administer that subject on any timeline that it so
18 chooses.
19 MR. POHLMAN: That's helpful. I
20 couldn't tie the relevant statute that this was
21 going to be supportive. Thanks, that's helpful.

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1 I'll withdraw the proposal.

2 MS. PODZIBA: Ron, do you have anything

3 else?

4 MR. HAGER: I'm sorry, I was talking.

5 No.

6 MS. PODZIBA: All right, Patrick, where

7 do we go from here?

8 MR. ROONEY: The good news is we can

9 actually jump ahead.

10 So the rest of Page 9 we talked about,

11 and then we talked about all of 200.6. I don't

12 think there's anything we didn't talk about.

13 I will pause on the bottom of Page 17.

14 Starting on line 33, we talked about

15 recently-arrived English learners, and we talked

16 about this slightly two weeks ago, and I think I

17 did not do a very good job of explaining it. Yes.

18 So there is a requirement that -- or

19 there's a permission around recently-arrived

20 English learners that's in the statute around the

21 accountability system, and it relates to whether

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1 students in their first year need to be assessed
2 or not. And then there's some flexibility that's
3 in the statute that's new in the ESSA around how
4 those recently-arrived students get included in
5 the accountability system and when they get
6 included in the accountability system.
7 That second part is not covered in this
8 regulation, because that's about the
9 accountability system. This piece that's here on
10 the bottom of of Page 17 and then onto the top of
11 Page 18 is just setting out the requirement that,
12 "while all students need to be included in the
13 assessment system, a state may elect to exempt
14 recently-arrived English learners from one
15 administration of the English Language Arts test
16 in their first twelve months of school in the
17 United States".
18 Again, this is something that was in
19 Regulations previously that the Department
20 permitted back in 2006 or so that's now a part of
21 the statute. It was codified in the statute from

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1 something that was in our regulations, and this
2 language actually doesn't look different, because
3 it was something that was all ready in the
4 Regulations. So there's very little change to
5 this part, or actually no change to this part of
6 the statute. And we wanted to describe that.
7 And then, the rest of Page 18, it is
8 coming from existing regulations, but if people
9 have questions about that, we're happy to discuss
10 that.
11 MS. PODZIBA: Lara?
12 MS. EVANGELISTA: I just want to
13 clarify, this is for the testing at three to
14 eight, because I'm guessing this is not applicable
15 to the high-school assessment test, because there
16 are often late arrivals who are coming in in the
17 eleventh grade. I mean, I'm guessing.
18 MR. ROONEY: So this would apply to any
19 student from one exemption of the English Language
20 Arts test in their first twelve months at school
21 in the United States, whenever they first entered

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1 schools in the United States.

2 So if New York had a grade eleven test

3 that they gave to all students, and a student

4 showed up in October of grade eleven, they would

5 be exempt from having the administration of the

6 English Language Arts test.

7 They would still have to take the math

8 test, and, if there's a science test in grade

9 eleven, I think the science test, but they would

10 be exempt from that first administration of the

11 Reading Language Arts. It's not grade dependent.

12 MS. PODZIBA: Kerri.

13 MS. BRIGGS: I just want to, I think to

14 Lara's point, it's an allowance. It's not "can't

15 take it". They can take it.

16 MR. ROONEY: They can take it. This is

17 the state's decision on whether to except

18 recently-arrived English learners. All of this

19 again, since the state is the entity that is our

20 grantee. They're the ones who these regulations

21 apply to first and they determine how to implement

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1 them in their state.

2 So this would be a state-exempt,

3 recently-arrived English learner.

4 Seeing no comments, we can go to Page

5 19. I want to say -- actually, the rest of this

6 text, there's not much left, and it doesn't change

7 from our current Regulations, although we're happy

8 to take questions on it.

9 I will point out that, if you look at

10 the top, this is 200.8, and the previous

11 regulation -- the previous page was 200.6. So we

12 skipped from 200.6 to 200.8. So I want to point

13 out that 200.7 is missing from this package --

14 it's not missing. It's purposely not here,

15 because 200.7 is really about -- in the past was

16 calculating adequate yearly progress in the

17 accountability system.

18 Because the accountability system is

19 not part of this negotiated rulemaking, and

20 because adequate yearly progress no longer exists

21 as a concept for the accountability system, we

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1 didn't bring it forward to talk about or discuss.
2 But it's something that we made part of the
3 accountability system as a separate consideration.
4 So it's not -- we didn't bring it here
5 for us to discuss at this table, right? But I did
6 want to point that out that we jumped from 200.6
7 to 200.8.
8 MS. PODZIBA: Audrey?
9 MS. JACKSON: I just have to back up
10 for a second. On Page 18, I was just seeing the
11 definitions, one is "migratory and other mobile
12 students, students experiencing homelessness," and
13 I'm just trying to clarify what that's with regard
14 to, and if the additions of the other categories
15 you put before should also be here.
16 I may have just lost reference of where
17 we are and what we're doing, but I see some of
18 those categories listed and others not, and I just
19 want to clarify why.
20 MR. ROONEY: That's a good question. I
21 might need Kay to me help answer that.

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1 I will point out that (G) and (H), so
2 starting on line 19 and line 24, are actually not
3 listed under Definitions. They are their own
4 category. The definitions under number (5)
5 definitions, line 13 is actually referring just to
6 the Section 200.6(F) that's referring to English
7 learners, so that defines it just there.
8 But Kay, do you want to clarify it
9 further?
10 MS. RIGLING: I think that, like
11 Patrick said, this whole section is a holdover
12 from our existing Regulations that were done
13 through negotiated rulemaking in 2002, and at that
14 time the negotiators had a concern that migratory
15 students and homeless students in particular might
16 be left out of the assessment system if it
17 wasn't -- if they weren't called out and included,
18 specifically in the Regs.
19 So basically what these two provisions
20 say is that a state must include migratory
21 children and homeless children in its assessment

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1 system.

2 I guess a question for you is whether

3 thirteen years later you think that we still need

4 to have these provisions explicitly called out, or

5 whether we're sort of more used to now including

6 all students in the assessment system, including

7 migrant students, including homeless students,

8 including students with disabilities, English

9 learners, everyone.

10 They were just put in here for emphasis

11 in 2002. We didn't want to take them out until

12 you had the opportunity to look at them and

13 determine whether you felt like they really should

14 still remain in.

15 MS. PODZIBA: Audrey.

16 MS. JACKSON: I guess my other question

17 would be, it says their "assessment and

18 accountability systems". So those imply two

19 different things to me. And so if it's a matter

20 of which subgroups we have to consider in

21 reporting and be held perhaps accountable, or at

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1 least publicly noting how they're performing, then
2 I think we maybe would want to discuss it.
3 But if it's just a matter of being
4 included in the assessment and not -- as written
5 it says "assessment and accountability".
6 MS. PODZIBA: Liz?
7 MS. KING: Yeah, I think that was a
8 good idea they had back in 2002, and thanks to
9 Audrey for flagging this.
10 I think it's worth preserving and also
11 moving youth in and foster care and also military
12 connected, also here for the same purpose, just in
13 terms of creating visibility and emphasis for
14 historically marginalized children who are likely
15 to be left out if not explicitly acknowledged.
16 MS. JACKSON: And I'd ask for state
17 leaders, and I'm assuming they would be able to
18 disaggregate data in that way, there wouldn't be a
19 lot of extra work involved, and it would be a
20 protection for some of our most adverse children.
21 MR. EVERS: Let's do it.

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1 MS. JACKSON: Did I just hear Tony
2 Evers say, let's do it?
3 MR. ROONEY: Liz, can I just ask for
4 a -- Liz, are you clarifying -- not to take us
5 backwards too much... but on Page 3, where we
6 define "status of the child in foster care" and
7 where we define "status of a student with a parent
8 who is a member of the armed forces on active
9 duty," that we move those definitions to this spot
10 in 200.6, so they're here with the definitions of
11 students experiencing homelessness and migratory
12 and other mobile students," so we make them like
13 an (I) and a (J) here.
14 MS. KING: Yes, I would make them (I)
15 and (J). I would copy and paste it; "a student
16 must include a child in foster care as defined".
17 And I'm fine with either having --
18 copying and pasting the text or referencing the
19 earlier text. I do want the foster care pieces to
20 be left on a higher priority within our
21 constituency, so that's the part that I will focus

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1 on.

2 But, yeah, I'm comfortable with

3 including a reference, but having an (I) for child

4 in foster care with the line "a state must include

5 a child in foster care as defined," and then

6 either a reference back here or a copy and paste

7 of the same definition.

8 MR. EVERS: Let's do it.

9 MS. PODZIBA: So is this a proposal?

10 Is it just a cut and paste?

11 MS. KING: Yes.

12 MS. PODZIBA: This is a proposal. So

13 discussion on this proposal.

14 MR. EVERS: Whatever the federal

15 government is requiring us to collect we collect.

16 So this is it. Right? It's all federal law.

17 Cool.

18 MS. PODZIBA: Marcus?

19 MR. CHEEKS: My thought is, if it's

20 there for affect and emphasis -- I mean, removing

21 it sends the wrong message definitely, so I don't

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1 see any harm in us carrying it over. Because
2 we're dealing with all students. I mean, all
3 means all.
4 MS. PODZIBA: All right, any dissent
5 from adopting this proposal?
6 MR. ROONEY: Can we agree -- I think
7 conceptually we agree. I don't think we've got a
8 reason to dissent, but we may want to play around
9 with the language and how it looks in there.
10 I don't want us to be duplicative in
11 200.2 and 200.6, but there may be a better way for
12 us to structure it that makes sense conceptually
13 and we can bring that back.
14 MS. KING: I would just add, with the
15 caution that Marcus made, that there becomes an
16 inadvertent message that gets sent when you remove
17 text. I think we saw that in some other examples
18 too. So I just could caution not to remove, but
19 absolutely finesse is the word I think it is.
20 MS. PODZIBA: Anything else on 19, 20,
21 21?

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1 MS. JACKSON: Sorry, we were just
2 talking about 19 and I detoured us. So whatever
3 you were asking about 19.
4 MR. ROONEY: No, I was pointing out
5 that 200.7 does not appear in the package for our
6 discussion here, because it was a regulation that
7 was focused -- a component of the regulation
8 that's focused on the accountability system, and
9 as a result, we didn't bring it forward for this
10 session.
11 But I did want to point that we did
12 jump from 200.6 to 200.8, but I thought that I
13 should point that out for the group.
14 MS. PODZIBA: Marcus.
15 MR. CHEEKS: Patrick, for the sake of
16 clarity, will you talk a little bit about 200.10.
17 What I'm wanting to hear more about is the
18 requirement as it relates to private schools and
19 the options as relates to state academic
20 assessments. Are the "maybe's" there?
21 MR. ROONEY: I think fundamentally what

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1 this is saying here in (A) is that if a private
2 school receives funding, it does not mean it needs
3 to participate in the state's academic assessment
4 system as a condition of getting that funding.
5 Sorry, they get services -- Kay is
6 correcting me. To clarify, they don't get
7 funding. They get services through the Equitable
8 Services provision. And in the case that a
9 private school is getting services served by the
10 private school, that does not require them then to
11 give the state assessment system.
12 MS. PODZIBA: I'm just cognizant of the
13 time, that we didn't take a break. Should we take
14 ten minutes and then come back and finish it up?
15 I apologize for that. Let's just take
16 a quick ten-minute break, and then be back at
17 4:00.
18 (Recess taken.).
19 MS. PODZIBA: I want to let everybody
20 know there are a bunch of public comments, so I
21 want to be sure to leave time for that.

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1 Anything else on 19, 20 or 21?

2 Ok, so than -- I should take breaks

3 more often.

4 So we're through six, and I think

5 that's all the content that we're going to work

6 through today.

7 Now we have a couple of process

8 questions to go over. So the first is, there is

9 this optional meeting. We have not achieved full

10 consensus on all issues. I apologize.

11 But Patrick, I'm going to let you say a

12 couple of things about that.

13 MR. ROONEY: Sure. First, again, to

14 reiterate, I really appreciate everyone's time and

15 dedication in the last three days. We think it's

16 been, maybe not quite as fruitful as we would

17 like, but a very fruitful discussion, and I think

18 we made a lot of progress on all of the issue

19 papers, even though we only came to tentative

20 agreement on one of them.

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21 I think we heard a lot of good feedback

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1 that we would like the opportunity to take back
2 and try to think how we can address those and
3 bring forward for further discussion.
4 We think a third session would be
5 helpful to try to come to consensus. I am an
6 optimist at heart, and I'm optimistic that we can
7 come to consensus on a package of regulations. So
8 we would certainly love to take the opportunity to
9 have a third session to try to do that.
10 MS. PODZIBA: Is there anybody who does
11 not want to come back and do this again?
12 MR. HAGER: Don't say "want".
13 MS. JACKSON: Can I make a vote for the
14 second hotel over the first hotel?
15 MR. HAGER: Yeah, yeah, yeah, second
16 hotel.
17 MR. ROONEY: We can talk in a second.
18 We do all agree that we should have a third
19 session?
20 MS. PODZIBA: Is everybody ok with
21 coming back?

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1 I'm glad. See you in a couple of weeks
2 for sure, but Patrick, go ahead.
3 MR. ROONEY: It's been fun. So there
4 are a couple of logistics things that I wanted to
5 say now that we're going to have a third session.
6 First, we will have to obviously work with our
7 logistics contract to get you all booked to come
8 out here. So I suspect that Monday morning you
9 will be getting -- our contractor will get in
10 touch with you to help you book your travel.
11 Audrey has a preference for the second hotel. So
12 that's good to know.
13 So our logistics contractor will be in
14 touch with you and we will be following up with
15 them to make sure they are in touch with you.
16 If you do not hear from them Monday or
17 Tuesday at the absolute latest, please let us know
18 so we can make sure that we attend to this, since
19 time is short and we want to make sure that we get
20 everyone booked for that third session.
21 Because we're doing a third session,

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1 the meetings will be April 18th and 19th. So that
2 doesn't give us a lot of time. It's a Monday and
3 a Tuesday. That Monday we will not be in this
4 room. This room is not available. So we're
5 actually going to be at our office down the street
6 from here. It's in the Potomac Center Plaza
7 office, which is on, I think it's 550 12th Street.
8 550 12th Street Southwest. So it's down from the
9 the Smithsonian metro for people who are local.
10 Because we're changing the location
11 from what is in the federal registry notice, we
12 will have to put a revised federal registry notice
13 up at the beginning of next week alerting
14 everybody that the meeting location will be
15 different for Monday, Monday only. On Tuesday we
16 will be back here, but that Monday session will be
17 at a different building.
18 So for all of you in the crowd who have
19 been patiently bearing with us for all of this
20 time, and for everyone at the table, I want to be
21 clear that that change will occur, and we will

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1 make sure we give you information and the address
2 so you know how to get there.
3 Security is slightly tighter in that
4 building, because we share with other agencies, so
5 you may want to give yourself a little bit more
6 time on Monday to get up to the auditorium in that
7 building.
8 The last thing I wanted to say is that
9 our plan will be to take all of the discussion and
10 we will build on the red-line text that we worked
11 on together. I don't exactly know how we're going
12 to do this, but we'll try to make clear -- either
13 color-coding or color-scheming or some other
14 method -- what we have agreed to and then what are
15 the changes that we're proposing for discussion in
16 the third session, so it's very clear what areas
17 we want to focus on. But we'll start with the
18 issue papers and the text that we were going to
19 approve editing together and that Judy was taking
20 notes on in the last three days.
21 We will work to get those to you as

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1 quickly as we can, so we would have time to review
2 them before the session on the 18th. It may not
3 be until late next week before we get those out to
4 you, but we will get them out as quickly as we
5 can.
6 And for those of you in the audience,
7 we will make them public on our website, as soon
8 as we get them out to the negotiators. So they
9 will go up on our website as quickly as we can get
10 them out.
11 But we're going to try to work through
12 a lot of the questions and the suggestions that
13 either we put a pin in because we needed to talk
14 internally, or that we didn't come to agreement on
15 or we just need to think about other ways to
16 address the questions when we come back as a
17 group.
18 I encourage you all and invite you all
19 to keep thinking about how, as a group, we can try
20 to think differently about some of the draft text
21 that's there. We've got some concerns. So when

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1 we come together on the 18th, we can use that time
2 productively and try to build consensus around
3 some of these areas that seemed like we were a
4 little bit at odds over the last three days, to
5 see if there is a way that we can find a middle
6 ground, where we can find something that is maybe
7 not the "perfect," but is certainly something that
8 helps advance the needs of the kids that we're all
9 talking about, and also kind of meets the concerns
10 that we have from our different groups that we
11 come with. Because I know we all have different
12 backgrounds, and we all are working from the same
13 thing.
14 So on that note, I'll turn it back over
15 to Susan.
16 MS. PODZIBA: Derrick, you had
17 identified the desire to have a subcommittee.
18 Could you tell us the status of your thoughts on
19 that.
20 MR. CHAU: At this point I think --
21 I've been collaborating with a couple other

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1 committee members, and we'll probably just come
2 back with a recommendation. I don't know if we
3 need to have a formal subcommittee meeting, per
4 se.
5 I don't get the sense there is any
6 opposition among the group for a need to explore
7 the option of including a bilingual, or a dual
8 emersion sort of exception to this, and I would
9 ask some coordination with the Department of Ed
10 folks on just the -- whether it's even possible to
11 put this in there.
12 So, I mean, I've been talking with them
13 a little bit also. So I don't think we need a
14 formal subcommittee meeting, per se.
15 MS. PODZIBA: I think that's fine.
16 Anything else before we go to public comment?
17 Aaron?
18 MR. PAYMENT: So I apologize. I came
19 back in late. The dates I know cannot work for me
20 and it's not just a matter of scheduling meetings
21 or appointments. I'm the lead of our legislature

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1 and we have a legislative session on the 19th.
2 So if it is on those dates, that means
3 that I'm not available, number one.
4 Number two, I think the Department has
5 requested a consultation with us. So I think it's
6 just the opposite of what I said last time. So, I
7 did talk with the NCAI, and we are in acceptance
8 of the request to do consultation during NCAI. So
9 I believe that's the week of the 27th of June.
10 MS. PODZIBA: Thank you.
11 Ok, I think we'll open for public
12 comment. So there's a microphone. If you could
13 just turn that on me for me, and I'm just going to
14 call people as they signed up. And apologies if I
15 mispronounce names.
16 Kandise Lucas, advocate for Equity in
17 Schools.
18 MS. LUCAS: Good afternoon. Once again
19 my name is Kandise, and I am a parent advocate
20 that primarily works with families of children
21 with special needs in low-income areas.

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1 I'm here today to talk about the issue
2 of accountability, and I know that that is a
3 primary concern for a majority of our community.
4 As parents, as stakeholders, and
5 advocates of stakeholders in the academic setting,
6 one of the greatest challenges that we do have is
7 insuring that there is equity and there is access
8 to educational services and that our states are
9 held accountable.
10 I operate mainly out of the state of
11 Virginia, and as a result of that we are
12 constantly addressing the state level in order to
13 find out how we can hold localities accountable
14 for implementing accommodations for our students
15 and insuring that they have access and equity
16 regarding a general curriculum.
17 I want to just share quickly a quote
18 from one of our awesome partners. I also
19 represent the Dignity in Schools Campaign. I'm a
20 member organization of that group, as well as one
21 of our federal partners, Ms. Janel here. There

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1 was a quote that was shared that's really
2 impactful, and I want you guys to hear this. It
3 says, "ESSA does not address the wide range
4 structural inequalities that contribute to the
5 learning achievement gaps. This includes dramatic
6 and equitable school funding across states,
7 districts and schools, and the intensified
8 segregation of students on the basis of race and
9 socioeconomic status," and I'd like to add
10 "disability" to that as well... "which have
11 together created a growing number of
12 underresourced Apartheid schools serving
13 exclusively poor and minority students.
14 "Squarely facing these ongoing issues
15 with much more powerful expectations for quality
16 and equity than ESSA currently offers will be much
17 more important than annual testing or measurement
18 in achieving the goals of our nation's most
19 important educational law".
20 And that was by Dr. Linda Darling
21 Hammond from Stanford University.

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1 As I'm standing before this committee,
2 I really want us to consider, yes, we need the
3 assessments. Yes, we need to hold some type of
4 uniformity regarding accountability for
5 assessment. But there are structural inequities
6 that continue to plague our children with
7 disabilities and our children of color, and we are
8 fighting, fighting with all our might at the
9 grassroots level to insure that our children are
10 getting what they need.
11 However, we are facing very hostile
12 responses. And so we need to have some type of
13 bite and some type of -- some type of strong
14 accountability in this program, in this -- in ESSA
15 to make sure that school districts, states are not
16 collaborating against the children, but
17 collaborating for our children.
18 And in closing I also state, the
19 parents are out there that want to be engaged. I
20 know there are issues regarding whether parents
21 want to have full engagement in our school

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1 communities. We have to redefine and re-establish
2 what "engagement" means for a lot of our families.
3 Parental engagement does not necessarily mean
4 attending every PTA meeting. There are various
5 areas that we need to expand in, you know -- not
6 just go traditional.
7 Orsman created a public education
8 system a hundred years ago. We all know it wasn't
9 meant for everyone. So we definitely need to look
10 at how we're going to expand. And I'm charging
11 the U.S. Department of Education to also become
12 more open to looking at and actively receiving
13 feedback from parents, educators and advocates.
14 Thank you.
15 MS. PODZIBA: Thank you.
16 Marty Jewell, Richmond NAACP.
17 MR. JEWELL: Good afternoon, everybody.
18 I've been listening to you go around with your
19 work, and it seems way over my head. I just want
20 to bring it down on the ground for a minute and
21 talk about what I believe is missing in rulemaking

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1 at the thirty-thousand-foot level.

2 I've been working with Ms. Lucas. You

3 have no idea how she been retaliated against by

4 Chesterfield County and Rico, and in some ways

5 Richmond City in Virginia, arrested four times,

6 criminally, and beat every one of the charges

7 because they were all made up.

8 It's very clear to me that the State

9 Department of Education is complicit with the

10 school districts in denying services to

11 special-needs children. What in the ham sandwich

12 are they doing with the money? I mean, they're

13 getting the funds, but they're denying these

14 children the services.

15 There's some dog in that cat, and I

16 just think that, as we make these rules, we're

17 going to have to in some kind of way drill down

18 with requirements that cause these people to

19 follow the state and federal law that's telling

20 folks that advocates don't have the right --

21 parents don't have the right to bring their own

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1 advocates, people banned when they assert that
2 right.
3 And so, I don't know how we get at
4 this, but it's hugely important.
5 The second piece is, and again, down on
6 the ground, in Richmond, eighty-five to ninety
7 percent of our children are not going to go to
8 college, yet we've got this hour and a half block
9 schedule that scared the bejesus out of me when I
10 first went to college.
11 We need to return to the
12 fifty-five-minute class. I'm learning that the
13 ninety-minute block schedule is highly formulaic,
14 which means you've got to transition every thirty
15 minutes. They're not doing it. Kids are bored in
16 the first twenty minutes, and then the last hour
17 is lost. And they don't come back to class for
18 another two days.
19 This is robbing our children of the
20 continuity that they need if we're really going to
21 make a difference.

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1 And so as you make your rulemaking, I'm
2 hoping that you can come down a bit from thirty
3 thousand feet and get at how the needs are being
4 skimmed over by what appear to be relatively
5 innocuous procedures. Thank you.
6 MS. PODZIBA: Thank you.
7 MS. JACKSON: Susan, just a question.
8 Will the names of the people who spoke be shared
9 with us at some point?
10 MS. PODZIBA: Well, they will be in the
11 transcript, if you want them.
12 MS. JACKSON: I was just curious.
13 MS. PODZIBA: Tichi Pinkney Eppes.
14 Sorry if I got that all wrong, from the City of
15 Alexandria, Richmond Public Schools.
16 MS. EPPES: Hello, everyone. It's
17 actually pronounced teechey pinknee eps. And I am
18 a school board member with Richmond City Public
19 Schools.
20 One of the first things I'd like to
21 dispel is that, as an elected official, I do know

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1 a little bit about education. We've gotten used
2 to the elected official just being there for the
3 policy piece of it and not really having an
4 in-depth understanding, and that's one of the
5 things that brings me here today with this group
6 of individuals.
7 We are working very hard to insure that
8 individuals understand that, just because the
9 majority of our population is in poverty, does not
10 mean that those children are not capable of
11 learning. Part of that issue that we are
12 attempting to address with some policy changes is
13 that, when you look at these assessments with
14 regard to the mandated testing, and then
15 ultimately in comparison with when the children
16 enter into schools, those type of other
17 assessments that they have to have, that perhaps
18 we should be considering that, because of the
19 challenges that the children face as a result of
20 the poverty, that mental health is one of the
21 issues that we may need to take a much closer look

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1 at, that as these behaviors -- the children begin
2 to exhibit the behaviors, I think we're missing a
3 critical piece that perhaps if we do some other
4 in-depth assessments before they enter into the
5 classrooms, we have an opportunity to insure that
6 we're putting the right individuals in the
7 classrooms with them, and we are equipping them
8 with the necessary professional development to be
9 able to work with these children.
10 So definitely, I'm really excited about
11 the ESSA. I'm looking forward to having an
12 opportunity to hold the local school board
13 association accountable along with our school's
14 attorney to make sure that, as a board member, we
15 are receiving that professional development from
16 that thirty-thousand-foot view, such that we are
17 able to then ultimately get down into the weeds,
18 if you will. That's another thing that's always
19 kind of said, Well, Ms. Epps, you're always in the
20 weeds.
21 I'd like for people to consider, our

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1 schools shouldn't be surrounded with weeds. These
2 children should be able to have grass to play on.
3 So I'll close that in saying that, for
4 me, one of the most important pieces is the
5 language that we use around public education and
6 how we divide our children in such a way that when
7 we speak to the challenges of poverty, it
8 oftentimes stigmatizes children in a way that
9 would be -- for instance with exceptional
10 education, we call "gifted and exceptional
11 education," and the children that are in poverty,
12 you have to kind of sometimes go into "special
13 education."
14 And so I'd like for this committee to
15 consider that we have an opportunity to really be
16 the champions for public education for all
17 children if we assess our own biases and consider
18 the languages that we use around it.
19 Thank you.
20 MS. PODZIBA: Thank you.
21 LaQuetta Massey, advocate for Equity in

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1 All Schools.

2 MS. MASSEY: Good evening. My first

3 name is LaQuetta. My last name is Massey. And

4 I'm actually a parent with a child that has

5 special needs.

6 My son is a little unique. He kind of

7 falls in the gray area -- I'm nervous as I don't

8 know what.

9 MS. GEORGE: Don't be.

10 MS. MASSEY: Through my advocacy for my

11 son, his name is Kendrick Malachi Massey. That's

12 why I'm here. I've been an advocate for my son

13 since he's been in the first grade, and it's been

14 a long, tough hike.

15 I was very fortunate to meet Kandise

16 Lucas. She's more versed at the laws regarding

17 policies. And so what happened was -- well, now

18 my son is in a Title I school. He is diagnosed

19 with dyslexia dysgraphia, and as an onset of not

20 properly being accommodated, he developed

21 reflexive neurovascular dystrophy.

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1 So he went from riding bikes in the
2 fifth grade to being homebound and a couch potato.
3 And so, what's going on is that I don't know how
4 the funds are allocated. I don't know what the
5 stipulations are put on how those funds are
6 allocated. But had my son been properly
7 accommodated, by people who I guess are more
8 educated with children such as my son to have
9 special needs that fall in the gray area, he
10 wouldn't have developed the medical portion that
11 we're dealing with.
12 He's on several therapies. He's on
13 sleep therapy. I take him once a week now to pool
14 therapy. It's horribly extensive. I've had to
15 literally leave my job. It has put me into an
16 impoverished state to go from taking trips to now
17 I can't even afford season passes to Kings
18 Dominion.
19 So it's been a downward spiral
20 economically for me, you know, and so I'm used to
21 being that person who helps the other people in

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1 the community.

2 So, there's two things that come out of

3 this. I've learned how to understand how the

4 lower-income families really function, and what it

5 takes to be functionable. But on a level dealing

6 with a child with special needs, in those schools

7 it's evident. I have burdens and burdens and

8 burdens of proof that is evident that they are not

9 equipped to handle kids such as my son and other

10 kids.

11 I just don't happen to be that parent

12 of a child, who is an educator and a grandmother

13 who is an educator. So I kind of had the

14 functionality or both levels. My mother was a

15 dynamic teacher. She took nothing and made

16 something out of it for the kids, and she met them

17 at their needs.

18 So they are dynamic teachers. I've

19 come across them. But you have to be trained

20 specifically to accommodate a lot of the needs

21 that's out here that these children have.

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1 They are our future. My son has an IQ
2 of 126 the last time he was tested. He's fourteen
3 years old. I forced him to be passed to the eight
4 grade because mentally he couldn't... he
5 couldn't... stomach failing, because, for one,
6 he's a perfectionist, and for two he's very
7 intelligent. He has full cognitive abilities.
8 He's aware of his environment. He's high
9 functioning, but the physical part took a down
10 spiral when he wasn't being accommodated
11 academically and he was constantly forced into
12 this environment that he couldn't function, and
13 his body just deteriorate.
14 So I'm pretty sure that there's more
15 children out there like my son. So my heart goes
16 out to them.
17 So as a result of it I joined the team
18 of advocacy so that I can at least help the
19 parents. I just talked to a parent just the other
20 day. And I could hear it in her voice, That
21 sound! And I said, Oh my God. She needs a

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1 Russian Kandise Lucas.

2 Seriously because, what people don't

3 understand if you don't wear these shoes, you

4 really don't understand how serious it is. In

5 advocating for my son, I have been put in a

6 position where principals would get in my personal

7 space, trying to invoke me to act outside of my

8 character.

9 Just recently criminal charges were

10 filed against me. We had to go back and forth for

11 truancy when I begged for these schools to put in

12 place a health care plan for my son.

13 So. What is it that a parent is

14 supposed to do? You know, how far am I supposed

15 to go down this hill in trying to make sure that

16 my son, who is fully functional, in being able to

17 be a productive individual of society?

18 He has a lot to give. I can't even

19 pronounce what it is that he wants to be,

20 molecular-something-something... when he is able.

21 He just wants to be enabled, because he learns

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1 differently.

2 So I don't know what's going on with

3 these Title I funds. I know he attends a Title I

4 school. They gave him his assisted technology.

5 The person who was in charge of assisted

6 technology prescribed to him two laptops. I don't

7 know the cost of them; one for the home, because

8 physically he can't carry but so much weight, and

9 one for school.

10 A teacher couldn't operate -- none of

11 his teachers could operate them. He would come

12 home and say, "Mommy, they're not accommodating".

13 But then when I would try to advocate for him,

14 then I would get, "Oh, yeah. He has the laptop".

15 Yeah, he has it physically, but no one can

16 instruct him how to use it.

17 So that's the proof that we need people

18 who have been trained, properly trained in certain

19 areas. You can't prescribe some medicines and you

20 don't know what they do. You have a headache and

21 you want to prescribe something that's designated

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1 for something that's totally different. That's
2 the situation I was in.
3 When Kandise came to the table, she
4 brought law to the table and therefore the level
5 of accountability increased.
6 So I don't know what you have to put in
7 place as far as being able to delegate how the
8 funds are proportioned, or what type of
9 stipulation that can be put on the monies that's
10 delegated.
11 Something has to be done. Because my
12 son attends a Title I school, has been for the
13 past three years, and so, it's been a struggle,
14 but I'm pretty sure I'm not the only person out
15 here.
16 And so, you know, I wish that someone
17 could walk into the shoes that I've been in for
18 the past three years. And I can't imagine for the
19 parents who may be intimidated, because if
20 criminal charges was pressed against me, and I've
21 never been in a court before, I don't even have a

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1 blemish on my driver's record. So I was
2 horrified. And not only that, my character. It
3 tore away my character. I'm like, Wait a minute.
4 I'm a single parent of six children. I have one
5 that just graduated from Virginia Union, number
6 three in her class, and a program at UVA. I have
7 another one who stays on the dean's list at
8 Norfolk State. I have two that's about to leave
9 and they're going to attend OD, and I can't
10 remember the other one. But, I'm a good parent.
11 So you want to press criminal charges against me
12 just because I'm advocating for my son, but you
13 all are getting the funds that you're supposed to
14 be able to accommodate my son? I don't know. I
15 don't get it.
16 But whatever needs to be deposited,
17 whatever needs to be done, if this is the deciding
18 factoring board, I would appreciate, not just for
19 my son, but for those other children.
20 Because, now I'm looking at you paying
21 for homebound for my son when you could just train

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1 someone to be able to better accommodate these
2 children. You know, I don't know how the costs
3 are done. I'm just learning this thing. I'm just
4 a baby here and just trying to get it, but I want
5 it for other people.
6 So that's pretty much all that I have
7 to say.
8 MS. JACKSON: Thank you.
9 MS. RICKER: Thank you.
10 MS. PODZIBA: That's all that signed
11 up. Is there anyone else in the audience who
12 would like to address the committee at this time?
13 Then public comment is closed, and we
14 will adjourn until the 18th and 19th. And Aaron,
15 we will certainly miss you.
16 (Whereupon at 4:32 p.m. the Negotiated
17 Rulemaking Committee meeting adjourned until
18 Monday, April 18, 2016, at 9:00 a.m.)
19
20
21

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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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