

Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 18, 2016

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

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1 April 18, 2016

2 ESSA negotiated rule-making session.

3

4 Ms. Podziba: Good morning everyone.

5 Welcome to the third session, the third and

6 final session of the ESSA negotiated rule

7 making for assessments before we start --

8 Speaking in tribal language.

9 Mr. Payment: Thank you all for your

10 appreciation this morning and your support.

11 I just ask for help as we go through our

12 negotiations here and thank our kids and

13 families for let helping make this happen.

14 Mr. Rooney: I want to invite our

15 acting secretary Ann to kick us off this

16 morning.

17 Anne: Thank you this morning.

18 Congratulations for finding PCP you were all

19 successful so thank you. I want to take a

20 moment for thanking the members of the

21 committee for your willingness to be here for

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1 the third session. Some of you traveled
2 three times across the country in the last
3 month and that's not an easy exercise and
4 many of you away from your families. I want
5 to say how critically important your work is
6 so far. I learned a great deal with this
7 process. I appreciate all of those who
8 supported the work including the experts, the
9 staff as well as the facilitator. Thank you
10 all very much for your time as Secretary King
11 said on day one ESSA honors the elementary
12 and secondary -- to ensure implementation
13 also honor that heritage. That rests in each
14 state, district and school. As we talk about
15 these proposed regulations it's helpful to
16 see what it will look like in the
17 implementation. The laws real world impact
18 depends on implementation. It's the
19 responsibility of the Department of education
20 to promulgate regulations that will help
21 clarify key aspects of the law. The

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1 regulations you draft can have a serious
2 impact on the field for years and maybe
3 decades to come. I take very seriously the
4 charge to support state, district and schools
5 and improving opportunity for all students
6 protecting civil rights and providing guide
7 rails that will help education for all
8 children. I know all of you do as well.
9 Thank you very much for that. The issues you
10 have been working on throughout these past
11 two sessions assessments and supplement not
12 supplant provisions are both technical and
13 challenging topics they are a vital
14 importance. For assessment it is law
15 requires for the first time ever that all
16 students in America are to be taught at high
17 academic standards that prepare them for
18 college and career and continuing the
19 requirement that vital information about
20 their progress this year with educators,
21 families and communities and students

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1 themselves on an annual basis through
2 statewide assessments. The law aims to
3 support English learners and students with
4 disabilities. You tackled many of these key
5 issues including native language and students
6 with the most significant cognitive
7 disabilities. In terms of supplement not
8 supplant they continue a longstanding
9 requirement that title one says supplement
10 and not supplant. It also makes critical
11 changes to the way the provision is written.
12 As many of you noted in the past sessions
13 auditors have had too much control over this
14 provision or how this provision was
15 implemented. Regulations should ensure that
16 the districts get to make choices on how to
17 spend their funds state, local and title one
18 in a way that makes good education sense
19 that's not driven by risk adverse auditors.
20 This important equity provision that title
21 one funds are sent to provide the additional

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1 resources and support that students need to
2 succeed. Unfortunately, we know that title
3 one funds are not able to do that. Make up
4 for shortfalls after state and local funding
5 in high poverty schools. As committee
6 members each of you are chosen to represent
7 specific constituency. Again, we appreciate
8 all of your efforts. The committee has not
9 agreed on every issue. You have done your
10 best to reach agreements for our students and
11 our country. I truly believe that one of the
12 benefits of this negotiating committee is
13 considering real problems in working out our
14 differences. We may ultimately arrive at a
15 better solution. I look forward to yet
16 another better discussion today and tomorrow.
17 I truly hope this committee can consent on
18 all issues. Thank you so much for your time
19 and expertise and thank you so much on behalf
20 of our nation's students.

21 Ms. Podziba: I am going to take a

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1 quick minute to review the agenda. Ms.
2 Rigling will walk us through the negotiated
3 rule making process and that is to put into
4 context what our work is and what happens
5 afterwards. We will go over the summary over
6 our last session and we will dive into draft
7 regulatory language in the order that you see
8 them. This order is meant to give us a
9 running start. We will do public comment as
10 we have at the end of each day. If we reach
11 tentative agreements on all issues consensus
12 approvals is when we walk through the drafts
13 one last time to make sure that we have
14 everything and depending on timing you either
15 have a good amount of time or we will do it
16 very quickly. That's what consensus
17 approvals are and we will go through next
18 steps. Any questions on the agenda? Kay, I
19 am going to ask you to put in context our
20 negotiations on that.

21 Ms. Rigling: It's crunch time. We

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1 have the final two days of negotiated rule
2 making and as Ann said we really appreciate
3 all of the work that you put in to date, and
4 we look forward to a really productive next
5 two days. We sincerely hope that we can
6 reach consensus on both assessments and
7 supplement not supplant. Consensus means
8 that mean for the committee to reach
9 agreement. There can be no dissent from any
10 member who's designated to participate in
11 reaching consensus. Thus for any voting
12 member you can't be out voted. This is the
13 protocol. Also, it says a member should not
14 block or withhold consensus unless he or she
15 has a serious reservation about the proposed
16 reg or a solution that is proposed for
17 consensus, and also please recall that
18 abstention is equivalent to not consenting to
19 reach consensus on both supplement not
20 supplant or on one if not the other. We
21 sincerely hope to reach consensus on both.

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1 If we do reach consensus the secretary will
2 publish the proposed regulations that conform
3 with the consensus based language. Unless
4 for some unforeseen reason the secretary
5 needs to reopen the negotiated rule making
6 process. I think we don't anticipate that
7 would be necessary. If we don't reach
8 consensus that doesn't mean that's the end of
9 the proposed regulations because the
10 secretary has the authority to publish
11 proposed regulations even if we don't reach
12 consensus, so this is our chance for
13 certainty. If we don't reach consensus there
14 is no guarantee that what we have before us
15 at this last session is what will be
16 published in the federal register as proposed
17 regulations. If we don't reach consensus
18 before the secretary publishes regulation he
19 must provide notice to the relevant
20 committees in Congress that he intends to
21 issue regulation that notice has to give him

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1 among other things a copy of regulations and
2 explanation of why those regs are needed.
3 Once Congress reaches that they have 15 days
4 to comment on them before they are published.
5 The Department will include those comments in
6 the public rule making record, will reflect
7 on them and address them. After a notice of
8 proposed regulations is published and public
9 comments are received the Department will
10 review and analyze the comments an issue
11 final regulations that's true whether we are
12 publishing as proposed rules, the regulations
13 that we reach consensus on today or whether
14 they are the decision of the Department to
15 publish proposed regs even if we don't reach
16 consensus. So again we remain as the
17 Department committed to the goal of achieving
18 consensus. We realize that the proposed regs
19 may not perfectly reflect each constituencies
20 ideal set of regulations, but collectively we
21 hope they will reflect a position that we can

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1 all live with that will approach education
2 for the underrepresented students that title
3 one is committed to serve. Thank you for
4 your continued contribution to this process
5 and let's get to work and try to achieve
6 consensus.

7 Ms. Podziba: We are going to jump
8 right into the issues we are going to start
9 with issue 5 A. Can I ask you to take the
10 meeting summary in the last of your folder?
11 Are there any questions or comments or
12 proposed revisions on the draft summary?

13 Mr. Cheeks: It's noting as a list of
14 individuals that were present. I was under
15 the impression they were accessible to us but
16 maybe not present during the last session, so
17 would they still be listed that had way?

18 Ms. Podziba: Patrick, can you
19 respond to that?

20 Mr. Rooney: They were in the room
21 for much of the three days. We ended up not

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1 needing them to come to the table. There's
2 one question that Martha Thurlow answered. I
3 am fine leaving them here as notes. If you
4 want to note they were present but not at the
5 table.

6 Mr. Cheeks: I knew one was here but
7 I didn't think the other two were.

8 They were and they sat in the
9 audience for much of the three days.

10 Mr. Chau: I am missing page two of
11 the summary I don't know about everybody
12 else? We may want to make sure we have the
13 second page before we agree.

14 Ms. Podziba: That's often helpful
15 that's a good ploy to make sure we get
16 through it. Just kidding. We will get back
17 to that after the summary. I just want to
18 call your attention to the bottom of the
19 first page and the second page. Who has more
20 of that? There's sections highlighted that
21 were the outstanding issues. When you got

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1 the drafts you saw a lot of gray shading.
2 What the gray shading was an attempt to do is
3 to highlight the not gray shaded as the areas
4 that need our most attention. Here's my
5 proposal. We know that the not shaded areas
6 or the unshaded areas or the areas that were
7 outstanding and were the most difficult
8 issues at our last meeting. While I realize
9 there's some components in the shaded areas
10 that people want to comment on, I am hoping
11 we can primarily focus on the unshaded areas
12 in our effort to reach consensus. We know
13 that if we can't reach tentative agreements
14 on those items we won't have a final
15 consensus. So with the permission of the
16 group can we focus on those unshaded areas
17 with the agreement that will come back to the
18 entire package once we reach tentative
19 agreements on those outstanding items?

20 Ms. Briggs: Unshaded?

21 Ms. Podziba: We are going to focus

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1 on unshaded. If there's something that we
2 can do quickly so we can reach tentative
3 agreement on the whole issue paper we will do
4 that. I will ask people if you have an item
5 on the (inaudible)-- to share, yeah let us
6 know so that we can flag any of those. Okay.
7 All right. Thank you. So with that I am
8 going to turn to Patrick and we will start
9 with issue paper 5A.

10 Ms. Podziba: We just did hand out
11 the revised summary if it's helpful to go
12 back and close that out. Everyone should
13 have page two now, sorry about that. I am
14 hoping people had a chance to look at these
15 before. I am hoping these will go quickly.
16 Any questions or comments on any part of the
17 meeting summary? Does anyone need another
18 minute? Is there any dissent from approving
19 the summary as written? Okay. Thank you.
20 Now I think we are ready.

21 Mr. Rooney: Thank you all, so we are

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1 going to jump right into issue paper 5A. I
2 am very much looking forward to the
3 discussion today and tomorrow. I know time
4 is short. I will try to be quick in
5 summarizing in what's in the proposals for
6 each of these issue papers. I will say we
7 tried to incorporate much of the discussion
8 from the last session. Hopefully you see
9 that on the issue papers when we sent them on
10 Friday. I am very much interested in
11 suggestions you have on how to strengthen
12 this language to make the best possible set
13 of regulations we can. As a quick reminder
14 this issue paper doesn't have a whole lot
15 shaded some have much more shaded than
16 others. As a general reminder the text in
17 black is text from our current regulations
18 that is in blue. It is text that is from the
19 ESSA that we pulled into these proposed
20 regulations that text in red is where we had
21 proposed language to try to clarify the

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1 regulations and some of this comes from our
2 discussion we had in the first two sessions
3 and some of this is while we are adding for
4 our discussion today. If it is under lined
5 that means it is something that we have added
6 for this discussion in burglar. So that
7 helps focus you. We did add a footer to each
8 of the pages to help remind you in case you
9 get lost with many different colors an
10 underlying scheme that is we have used.
11 Hopefully that's helpful. Starting with
12 issue paper 5 A. There's changes to this
13 that I will try to walk through. First in
14 the paragraph the first paragraph on page two
15 we clarified that this is focusing on the
16 academic assessments that's the required
17 under point two you see right in letter F the
18 first under lining in red. We based on part
19 of the discussion we had --

20 Ms. King: We are going to go through
21 clean versions?

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1 Mr. Rooney: Yes we are going to go
2 through red and then clean. I supposed we go
3 through the clean version which should be the
4 first version for each of the paper for each
5 of the issues in your binders for each issue
6 paper. I think it makes it easier to read
7 what we are proposing and what we want to
8 discuss. There may be time that is we have
9 to cross reference to the full package in
10 issue paper six and again like we did last
11 time I propose that we use the cleaner
12 version which gets rid of the strike through.
13 I think it's easier to see where we are
14 discussing if we do it that way. Okay so
15 getting back to issue paper 5A. I think
16 there's a lot of discussion about
17 accommodation under both issue 5A and issue
18 paper 4A as a result we made changes and
19 Delia suggested we capture accommodations for
20 English learner and student disabilities
21 after considering that discussion and Delia's

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1 point we propose a different take on how to
2 do that and you it will make more sense when
3 we see issue paper five. As a result here
4 we kept here in general the states have to
5 ensure appropriate accommodations and we
6 clarify this is talking about the student
7 status as an English learner and looking at
8 accommodations specifically for the needs of
9 English learner if applicable in student
10 status in paragraph A. If you wanted to look
11 at the language where we identified the
12 different groups OF children with
13 disabilities that would need accommodations
14 it is the 200.6 A in the full package. It's
15 also how we begin issue paper 4A. So that is
16 where we clarify that as children covered
17 under IDEA and other acts which would include
18 the rehabilitation act and section two of the
19 American with Disabilities Act. Ron?

20 Mr. Hager: I appreciate you all
21 having an explanation and not having all of

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1 the them spelled out in the regulations maybe
2 in the preamble as you are going through
3 explaining what you have done you can do the
4 cross reference and explanatory text. You
5 don't have to dog down the regulation
6 basically doing what you are doing for us in
7 the preamble explanation assuming we get to
8 consensus. There's a few times that
9 obviously throughout that happens. Thanks.

10 Mr. Rooney: Thanks for that
11 suggestion Ron. Moving on the next piece to
12 discuss is probably that's a change to
13 this -- would be looking at page 30 if you
14 look at romanette 4B, so this is where the
15 state in romanette 4 is where they have to
16 identify what languages other than present to
17 a significant extent. We spend a fair amount
18 of time talking about this on capitol B
19 bottom half of page three. We added English
20 learners who are Native American or Alaska
21 natives. This is talking about English

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1 learners. I think I would like to actually
2 make an amendment to the proposal that we
3 made that because of how we define native
4 American's later in this issue paper we are
5 going to discuss we don't need to say or
6 Alaska natives that by saying native
7 American's we are including the Alaska
8 natives an native Hawaii students an native
9 Pacific islander students. I will point it
10 out to you when we get to tend of the issue
11 paper. The next piece to point out is
12 something that's not here. We spent time in
13 the last session talking about these criteria
14 particularly what was capitol D which was an
15 additional consideration that states should
16 look at English learners any languages spoken
17 by 30% of English learners. Based on the
18 conversation and the discussion we had have
19 delete that had from this list of
20 considerations for this state when it's
21 defining when it's identifying languages

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1 other than English that's present to a
2 significant extent. The next issue that
3 shows up is issue five of the issue paper.
4 It's the red text that starts with letter G.
5 This is a significant change. We spent a bit
6 of time talking and they were helpful
7 pointing out the Native American languages
8 act and considerations for student who is are
9 enrolled in a Native American language medium
10 school or an immersion program. We called
11 internally among ousts after that session and
12 talked with our attorney's always a good idea
13 when we work with the Department of
14 education. There are in addition to the
15 Native American language act there's several
16 components in the ESSA and there's executive
17 order trying to incentive wise in providing
18 supports in Native American languages and
19 groups of student that is we think based on
20 the components that it does make sense to add
21 section G which says which provides an option

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1 for states to develop a Native American
2 language version of its reading language arts
3 assessment that it can administer to students
4 enrolled in the Native American language
5 immersion school or programs even if those
6 students are not English learners, so
7 stepping back one step reminder that the law
8 says that for reading language arts the test
9 needs to be in English except for English
10 learner who is maybe tested in their Native
11 language for three years and additional two
12 years on a case by case basis. So this would
13 create an exception for those students even
14 if they are not English learners to take the
15 reading language arts test in their Native
16 American language if they are in a Native
17 American language school or Native American
18 language immersion program for at least 50%
19 of the time majority of the schooling is
20 instructed in that language. This again
21 because it's Native American language it

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1 would cover Alaska native and native Hawaii
2 immersion programs also. You can see that is
3 what is spelled out in G romanette one, two
4 and three. I think that other piece to point
5 out on this is number two at the bottom of
6 this page which clarifies that which
7 exception for those student ins these
8 programs or schools would last until up no
9 later than eighth grade. With eighth grade
10 they have been take ago test in English.
11 This would permission for the students
12 developing a reading language arts test. I
13 will stop there to see if people have
14 questions about that aspect?

15 Ms. Harper: I have a quick question.
16 Just one clarification is that we would say
17 Native American language medium schools. I
18 think that also aligns it with NAHLA and a
19 couple of other definitions if that's
20 something that's available instead of the
21 word impression we would say Native American

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1 language medium. It's the phrase that's used
2 in NAHLA.

3 Can you point to where under G we
4 just talked about students providing
5 instruction in Native American or Alaska
6 native languages? Clarify wherever we say
7 Native American we should delete Alaska
8 native because it's unnecessary. There's two
9 spots here including this first one in G at
10 the very last line where I would say we
11 strike Alaska native. You have just Native
12 American language and then can you point to
13 where your recommendation is Leslie?

14 Ms. Harper: Page four number two
15 applicable students are Alaska native
16 language immersion schools. We would use
17 the word Native American medium school
18 instead of immersion.

19 It's page five in my set. It's the
20 first sentence in G.

21 Ms. Harper: It's in several spots.

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1 Can you explain the difference
2 because we thought medium was a bit unclear
3 that it wasn't and I don't know we need to go
4 back and look at I'm not sure we actually saw
5 the programs described that way in NAHLA, but
6 we will go back and look at that. Is there a
7 problem with immersion? It seems more
8 explanatory to the average person reading the
9 regulations?

10 Ms. Mack: Okay. The medium of
11 instruction is the native is the specific
12 Native American language.

13 Ms. Rigling: I saw that language. I
14 never saw it modifying school or program but
15 I did see the medium of instruction.

16 Ms. Harper: Okay.

17 Ms. Rigling: Okay. We can go back
18 and look at it. I just think that we tried
19 to use what we thought was maybe a more
20 common I word so people knew what we were
21 meaning?

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1 Ms. Briggs: In reading G two I
2 wasn't immediately apparent to me that meant
3 an eighth grade student needed to take the
4 reading language arts test in English which
5 is I think what you meant.

6 Mr. Rooney: It is what we meant.

7 Ms. Briggs: I think by no later than
8 eighth grade is tripping me up a bit. I am
9 not sure how you would revise that. I think
10 you just mean like they are taking the
11 reading language arts test in English as the
12 state gives it to everybody else in that
13 grade.

14 Mr. Rooney: I am open to suggestions
15 on language. The only thing coming to my
16 mind is to say in reading language arts in at
17 the latest eighth grade, which feels a little
18 clunky to me. I think that

19 Ms. Briggs: Can you just say during
20 the 8th grade?

21 Mr. Rooney: By no later than during

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1 the 8th grade?

2 Ms. Briggs: Strike by no later than
3 the eighth grade and say during eighth grade.

4 Mr. Rooney: Does during eighth grade
5 work or is there a reason why I want the one
6 thing we are trying to clarify is it should
7 be as soon as the students are taking are
8 being instructed in English primary they
9 would start taking the test in English so
10 that should happen by eighth grade by the
11 latest. It may be different for different
12 schools depending on how the program is
13 structured I don't know if we want to presume
14 it will be the same. I agree the language is
15 a little unclear I don't have a suggestion to
16 fix it?

17 Mr. Hager: It's really based on G
18 one which says provided in the instruction is
19 primarily in the native language, so that's
20 50% so we could have before eighth grade, I
21 think that's what the Department is saying to

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1 no later than its two requirements.

2 Ms. Podziba: Are you okay Kerri with
3 that explanation?

4 Ms. Briggs: Sure.

5 Ms. Goss: I was going to suggest
6 that if using the language by starting. If
7 you say by no later than starting the eighth
8 grade that might clarify it better.

9 Ms. Rigling: We also had a
10 suggestion to move using assessments written
11 in English by no later than the end of the
12 eighth grade or we could also say in eighth
13 grade so move that end clause up. I think we
14 would leave that in and add at the end of so
15 it would saying using assessments written in
16 English by no later than the end of the
17 eighth grade or however in eighth grade
18 starting in eighth grade.

19 Ms. Briggs: I get it.

20 Ms. Rigling: I want to go back to

21 Leslie's point if we took out immersion and

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1 left it native American language or school or
2 program? Would that work?

3 Ms. Harper: I just I just know that
4 it could possibly work it leaves it open for
5 interpretation. I know some of the states in
6 which our programs are locate redirect
7 examination our schools are located states
8 use the term medium in their statutes native
9 American language schools they use it
10 differently than they leave immersion to
11 describe how does this go? They describe an
12 immersion program as being smaller components
13 of the school and they use the word medium to
14 describe a school that is conducting all of
15 their academic content in the medium of a
16 specific Native American language, so it's
17 different in the different state that is we
18 represent depending on how their statutes
19 read. We could leave both words in their
20 immersion or medium or --

21 Ms. Rigling: Maybe take both out and

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1 maybe use guidance to clarify that you know
2 this could be immersion or it could be medium
3 it's really sort of up to the particular
4 state because one of the concerns we were
5 worried about with immersion is that implies
6 a hundred percent of the time whereas you
7 seem to be saying if anything in some states
8 immersion is less than maybe even 50%.

9 Ms. Harper: Several different
10 models.

11 Mr. Rooney: We will remove the word
12 immersion.

13 We will add preamble.

14 Ms. Jackson: I just wanted to see if
15 maybe procedurally where there are things
16 where we aren't necessarily in disagreement
17 it's wordsmithing if we maybe had a protocol
18 nobody really gets it we could name the
19 parties will look into it and then check just
20 to save us time. I feel like issues like
21 this where we could sit and talk about it.

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1 Ms. Podziba: I appreciate that. If
2 we can reach tentative agreements meaning we
3 get through the whole issue than we don't
4 have to come back to it. If it's something
5 like that and we can't settle it quickly that
6 we just put a pin in it and someone will come
7 back to it. Thank you.

8 Mr. Chau: I wanted to give the group
9 an update around the language under dual
10 immersion and talking the Delia and Lara and
11 others. I think broadening the concept of in
12 dual immersion schools wouldn't necessarily
13 be appropriate for this section because it
14 primarily deals with English learners another
15 dual English school there is' not English
16 learner ins dealing with language and where
17 the language of instruction is primarily not
18 in English. It wouldn't fit in this section
19 or be appropriate in this section. It might
20 be more appropriate for other areas. It's
21 something that I hope the department can

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1 investigate and maybe propose how dual
2 immerse schools can test ideally down the
3 line in the language primarily language of
4 instruction. I think in this instance I am
5 really glad that we were able to include this
6 piece and there seems to be some legal basis
7 around this already, but I think for dual
8 immersion for other languages I think we
9 decided that it's both in an assessment piece
10 and also in accountability piece too that's
11 up to the states and that would probably need
12 to be modified of the ESSA that we are not
13 really regulating either that's where we are
14 at. I wanted to give the group an update on
15 that.

16 Ms. Briggs: I almost hate to ask
17 this but I am going to ask. The state's
18 required to develop this test or is it an
19 option?

20 Mr. Rooney: It's an option. I do
21 want to point out I am not seeing additional

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1 comments. I did mention in romanette three
2 on bottom of page five that while we think
3 this is permissible to have a Native American
4 language test for these students and if they
5 are not English learners that we do think
6 that if they are English learners they will
7 have to take English learner proficiency test
8 whether they need services under title three
9 in English you spell it out here in romanette
10 three that we do think that's important that
11 they continue to have an English language
12 proficiency test if they are English learners
13 even if they are Native American students
14 attending native American medium schools.

15 Ms. Podziba: I am going to take us
16 back to F is that okay. Are there any
17 comments on F one romanette 1 or romanette 2,
18 which takes us through the middle of page 2
19 or page 3? We are in the beginning of the
20 rest text. We are looking at F one and
21 romanette 1 and 2, which goes through middle

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1 of page three.

2 Ms. Jackson: Sorry, I was just doing
3 oriented I can look into this further because
4 it's not clear. There's any language about
5 who's making children which language the
6 children will be instructed in. I know
7 that's kind of some states have core team
8 that would make that decision and some states
9 do not. I am wary of there being a blanket
10 decision and not a decision in line with the
11 manner of instruction.

12 Mr. Rooney: Is your question on how
13 they decide whether to take native language
14 version of the assessment?

15 Ms. Jackson: If you have a language,
16 language learner we talked last time in many
17 different examples of how a child may speak a
18 language but it would not necessarily be the
19 best language to assess them in if they are
20 not being instructed in that language then
21 it's not necessarily an appropriate measure.

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1 So that's a good question. I don't
2 know that the Department has a suggestion I
3 think that maybe something for states and
4 districts to consider how to implement I'm
5 not sure we have never addressed that in the
6 past when it's been something that I permit
7 that had we leave that to the state and
8 district discretion how I identify student
9 take a native language version of the
10 assessments if the state has one. I don't
11 know how we would regulate on that or what
12 would be a good proposal for that. I guess
13 maybe in guidance, which I am still not an
14 expert on. Something about making sure that
15 at the school level teachers, administrators
16 they are aware of which assessments are
17 available and the guidelines for what would
18 be appropriate. I am just thinking of how
19 hectic it can be in ordering assessments or
20 ordering licenses to do computer assessments
21 and knowing which options are out there and

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1 the basis on which they would be appropriate
2 would help other than just the general system
3 of them being existing in regulation.

4 Ms. Podziba: I am going to ask a
5 guidance issue that we don't have a lot of
6 discussion on it. That we try to focus on
7 it. Delia, do you have a something to say on
8 that? It takes a minute.

9 Ms. Pompa: Each state varies. I
10 don't think we should specify anything in
11 there.

12 Ms. Podziba: I am going to move to
13 romanette 3 and 4.

14 Ms. Pin Ahrens: I just wanted to
15 open a little bit for discussion in terms of
16 state decision making for the languages other
17 than English I don't see in here where
18 stakeholder input is available for the
19 decision making in deciding which languages
20 other than English will be considered.

21 So if you look at number two on page

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1 three it's the under lining number two which
2 doesn't mean it's actually part of the
3 regulatory process. It can further confuse
4 things. It's the purpose of the process
5 together meaning assessments other than
6 language and -- consult with educators I
7 think that addresses your point?

8 Ms. Pin Ahrens: Sorry Patrick we
9 were trying to find it in here. Never mind.
10 Thank you.

11 Ms. Podziba: Is there anything on
12 romanette 3 or 4? I am guessing everyone has
13 notes. Tony?

14 Mr. Evers: I would like to offer
15 addition 4A that's getting us to the right
16 spot at the end of the 4A I will talk about
17 why at first. I think we need to put some I
18 love the word guardrail because it's reused
19 all the time now so it's part of my --. The
20 guardrail at the end because there's many
21 states where the most populous language other

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1 than English is a really small N and it would
2 be you know 20 Somali kids in some places not
3 that they don't deserve recognition, but I
4 just so here's an offer that's my concern
5 that at the end if we put in if such language
6 is a primary spoken language and on at least
7 ten percent of the total student population
8 on a state. That puts the guardrail so it
9 states have some more certainty as to what
10 they should or should not be doing.

11 Mr. Rooney: Did you mean 10% of the
12 total state population or 10% of the state's
13 English learner population?

14 Mr. Evers: Of the total population.

15 Mr. Rooney: I may need to talk with
16 some colleagues on that. My first response
17 to that would be because all of this is
18 things the state should take into account
19 when they are identifying the language that
20 are present not that states have to
21 necessarily create a native language version

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1 of the test for that population. If you look
2 above the state needs to identify their
3 processed to identify the languages and then
4 their plan to develop assessments including
5 if you look at number three right above
6 romanette four Arabic 3 as applicable the
7 explanation of the reason the state has not
8 developed an assessment despite making every
9 effort that provides some I don't want to say
10 protections. It provides a caveat against
11 that. This is just about defining what
12 languages other than English are present and
13 then the piece before it is then what the
14 state has to do once they identified those
15 languages. I think for that purpose we feel
16 that it's helpful to keep that language in
17 there that at a minimum the state is
18 identifying the language that's other
19 language most commonly spoken and other
20 changes they might want to make further
21 assessments.

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1 Ms. Pompa: I would agree. I think
2 it's important for us to all keep in mind
3 exactly what Patrick said. This is not
4 requiring states to do anything. It's just
5 saying you need to take this into account and
6 given the historical implementation of this
7 requirement in the law I do think that some
8 language giving those perimeters is important
9 at this point.

10 Mr. Evers: Some certainty would be
11 helpful that's why I'm asking for it.

12 Ms. Podziba: So is there further
13 discussion of the proposal is there dissent
14 on this proposal? There's dissent on the
15 proposal. Okay. Any other items?

16 Mr. Evers: This is not a new issue
17 for me B and C. The issue of consideration
18 is troubling in that I am not sure as a state
19 agency how we could document what adequate
20 consideration is. I think there's enough
21 other kind of guardrails in this language to

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1 satisfy what's in B and C. I would propose B
2 and C.

3 Ms. Podziba: Proposal to strike B
4 and C? Is there discussion?

5 Ms. Pin Ahrens: I want to reiterate
6 what Patrick was saying these are guidelines
7 to help the states flag what languages may be
8 important to look at to develop, so I would
9 prefer that they remain in because there is
10 no requirement for the state to develop
11 languages for B and C.

12 Ms. King: Yeah just to build off
13 what Rita said, I understand the concern
14 about the difficulty that one is considered
15 something. I think it is purposely it's
16 meant to provide direction to the state and
17 the context of making this decision. I am
18 comfortable with the fact that it's hard to
19 demonstrate that you have done that. I think
20 it's important that the state understand from
21 the perspective of the regulation and the

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1 department the types of thing that is should
2 be informing that decision. I am concerned
3 that I mean you know we could make it more
4 aggressive and we could require demonstration
5 of the ways in which it was taken into
6 consideration. I think that would be
7 excessive burdensome I think leaving it in
8 the language to consider. I think taking it
9 out altogether obscures important information
10 that would form discussion within the state
11 when they are making that decision.

12 Ms. Podziba: Tony, do you want to
13 respond?

14 Mr. Evers: I wouldn't want to make
15 it more complex and difficult. Thank you for
16 not suggesting that. I just think it's
17 already part of the parcel of what is in here
18 and I would want to, I would like to keep
19 that my proposal as is. Also not to be
20 non-germane I didn't speak up with the
21 language at the end around immersion or other

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1 definition of schools I thought was
2 outstanding work on part of the Department.

3 Mr. Rooney: Thank you.

4 Ms. Podziba: Do you have a comment
5 on this proposal?

6 Mr. Rooney: All of romanette four
7 comes from romanette 3 and if you look at
8 number 2 that the state has to develop the
9 process to gather meaningful input and
10 consider what languages are present. I think
11 that's where Tony's point we would expect
12 states to document how they considered that
13 in the steps they went through in the
14 stakeholders they engage with that would
15 cover how they would meet in the B and C.

16 Ms. Podziba: On the proposal to
17 strike paragraphs B and C is there any
18 dissent from that proposal? Yes.

19 We are off to a good start.

20 (laughter)

21 Ms. Podziba: Are there any other

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1 proposals or concerns to raise on romanette
2 4? Okay let's move to paragraph two. Any
3 comments or questions on paragraph two? Just
4 leave the mics on the table so that we can
5 just pass them back and forth.

6 Ms. Briggs: I do want to move back
7 to Tony's suggestion about the 10%, which may
8 or may not be the language exactly. I think
9 he's getting into an issue that I worry about
10 for people who are implementing this law and
11 that it may be potentially setting up an
12 expectation that a state can't follow through
13 on. So you know back to the students who are
14 Somalian to create a written test in Somalia
15 is practically impossible. I hate to set up
16 people's expectation that something is
17 absolutely going to happen when it's not
18 practicably feasible.

19 Ms. George: Just to again being from
20 Washington state it is doable to do these and
21 again it's not a requirement. These are

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1 considerations for the state to factor in and
2 making the decision of developing this
3 assessment.

4 Ms. Podziba: Kerri, do you have a
5 specific proposal?

6 Ms. Briggs: I'm thinking.

7 Ms. Podziba: Are there any other
8 items for discussion on because we have gone
9 through G is there anything else for
10 discussion on issue paper 5A Patrick?

11 Mr. Rooney: I do want to point out
12 on page six, I didn't mention this but I did
13 reference this. This is the new H wings
14 where we define Native American to mean
15 Indian Native Islander or Pacific
16 Islander -- one second. Sorry. So this is
17 where we define Native American which is why
18 we don't need to say Alaska native elsewhere
19 in the section. I do think we need to amend
20 it slightly to say for the purpose of this
21 section the term Native American means and

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1 then in quotation marks Indian as defined in
2 6 -- of the act which includes Alaska native
3 and members of federally recognized or state
4 recognized tribes. Native Hawaii semicolon
5 and Native American Pacific Islanders we
6 think by adding that definition at the end it
7 can reference Native American's throughout
8 this regulation or proposal of regulations.

9 Thank you for that revision. Are
10 there any other items for discussion on issue
11 paper 5A?

12 Ms. Rigling: I want to go back to
13 paragraph two I think there's a few
14 conforming change that is we need to make.
15 In paragraph romanette 1 I think we would
16 strike or Alaska native and also language
17 immersion. Paragraph two on top of page
18 four -- Kerri, do you have anything else?
19 Anything else on issue 5A? Is there any
20 dissent on adopting tentative agreement on
21 issue 5A? Okay. Congratulations we are off

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1 to a good start. Okay we are going to move
2 to issue 5B, Patrick?

3 Mr. Rooney: Hopefully this one will
4 be a short conversation. We did not make
5 much change for this based on what we saw in
6 session two. There were a couple of changes
7 that I wanted to point out. It helps if I
8 turn my microphone on. Issue 5A and
9 hopefully 5B hopefully we can move through
10 this one pretty fast, too. There's not a lot
11 of changes based on session two. The first
12 that I wanted to point out is that under 3
13 romanette two the capitol A kind of toward
14 the bottom of pages two. Again, I am looking
15 at the clean version. We added in the phrase
16 including information provided that parents
17 consisted with 20.2 E. So this is about
18 providing information about how students
19 perform on the ELP assessment. We discussed
20 a little bit about how that information is
21 provided in a way that parents can

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1 understand. I am going to ask that you
2 toggle over to the full package for a minute.
3 In the last session we spent time I think it
4 was in issue paper three talking about this
5 language about how information is provided in
6 a clear manner to parents and whatever
7 notices those states have to provide. In
8 order to help provide some consistency. We
9 put a new section in 200.2, which were then
10 going to cross-reference if you turn to page
11 four line 33. It doesn't look much different
12 from what we talked about in session two but
13 this letter E we are now put anything this
14 location and then we are going to reference
15 it at different points throughout the
16 proposed regulations. Does everyone find
17 that? Issue paper six the clean version of
18 issue paper six page four line 33. This is
19 where you are asking for information where
20 you provided whether its notices to parents
21 or score cards or these are the expectation

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1 that is states would have to meet. Again, we
2 talked about each of these three romanettes
3 one two and three in the last sessions and we
4 had some discussion mostly about romanette
5 three and there were some examples in EG's in
6 this example and in this romanette that we
7 deleted just for brevity and clarity so now
8 this is a be upon request by a parent with an
9 individual with a disability as defined by
10 ADA and provided an alternative format
11 accessible to that parent. In the last
12 session we talked about examples OF what that
13 might be in having screen readers I think we
14 are happy to clarify that in the preamble or
15 elsewhere but for the regulation or proposed
16 regulation we wanted to be more concise.

17 Ms. Podziba: Should we take comments
18 on this part now since it's sited in 5B. Are
19 there any comments or questions or proposed
20 revisions for paragraph E in the whole
21 package, which is cited in 5B?

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1 Ms. Pompa: I want to thank you for
2 putting this in here. We are finding
3 children who existed for many many years who
4 are both have disabilities and who are
5 limited English proficient or English
6 learners and this language I believe will go
7 a long way toward clarifying for districts
8 and states on how to support those parents
9 and children.

10 Ms. Pin Ahrens: I want to ask why
11 guardians was deleted from issue paper six
12 because we have nontraditional families
13 especially with immigrant or refugee families
14 where they maybe living with their aunts or
15 grandparents.

16 We deleted guardian because there's a
17 definition of parent that includes guardians.
18 It's a pretty broad definition that's why we
19 did it. We thought it was redundant. We can
20 certainly again in the preamble highlight
21 what the definition is. If you would like I

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1 could read that definition if that would be
2 helpful?

3 Ms. Pin Ahrens: Thank you.

4 Mr. Ahart: Under romanette 3 I am
5 going to ask if we consider adding to the
6 extent practicable as it is in romanette two
7 just thinking of some very small populations
8 where it's where I don't even know if it's
9 possible for us to do. It's also covered
10 under OCR. Anyway, if there's a compliance
11 issue.

12 Ms. Podziba: Ron, do you have a
13 response?

14 Mr. Hager: The phrase may
15 apply -- in terms of ADA in terms of what is
16 and is not required you are talking about
17 reasonable accommodations? I think if we
18 just keep it the way it is with consistent
19 with the ADA that's really what we want. In
20 terms of alternative formats for parents or
21 Braille a lot of EG's were in there to give

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1 example. Which you know departments have
2 taken those examples out. Those are pretty
3 much going to be reasonable accommodations no
4 matter what. The school district when you
5 look at the definition of reasonable
6 accommodation. Look at the size of the
7 entity to determine what's reasonable. The
8 bigger entity the more required. It's a
9 sliding scale. It's hard without to imagine
10 a school district that would not really be
11 required to provide those kinds of
12 accommodations to parent with a disability.

13 Mr. Ahart: Why are we duplicating
14 it?

15 Ms. Podziba: Hold on I need Kay in
16 the conversation.

17 Ms. Rigling: I thought you were
18 referring to romanette two to add to the
19 extent practicable about the oral
20 translation. And it's my understanding that
21 we think that's actually required by title

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1 six of the civil rights act that an oral
2 translation to a parent who has limited
3 English proficiency is always practicable.

4 Ms. Podziba: Thomas which was your
5 proposal to put it in romanette two?

6 Mr. Ahart: I was asking for it to be
7 added to 3.

8 Ms. Podziba: Kay thought you were
9 asking for the last line in two? The
10 proposal is for romanette three.

11 Ms. Rigling: I think it's then
12 required by ADA.

13 Ms. Podziba: Unless you are drawing
14 the proposal based on the conversation I will
15 see if there's dissent to it.

16 Mr. Ahart: I will withdraw it.

17 Ms. Podziba: Anything else ton
18 paragraph E in the package? All right let's
19 move back then to issue paper five which
20 sites that paragraph. Is there any further
21 discussion on issue paper 5B? Is there any

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1 dissent on issue 5B? Great. We are moving
2 then to issue paper two.

3 Mr. Rooney: We are making great
4 progress. Issue two which is the first in
5 session two. In this language on this issue
6 paper should look very familiar I think it's
7 unchanged. You actually hand this out at the
8 very end of the last day of session two
9 hoping that we would try to come back to it
10 and reran out of time. We want to spend some
11 time this morning talking about this issue
12 paper this language should also look familiar
13 because it's similar to the language that we
14 discussed and ended with as kind of let me
15 put a pin in this issue paper on the first
16 day of session two unless the days are
17 starting to blend together for you. The main
18 issue that we spent our time talking about
19 this issue paper the last time was paragraph
20 four on page three. Reminder this is about
21 permitting states to in case where is

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1 students are taking advanced mathematics
2 versus eighth grade take the high school test
3 in place of the eighth grade test and taking
4 additional high school assessment once that
5 student reaches high school. Paragraph four
6 is I think something that the Department
7 feels strongly about trying to keep in there
8 because it's focused on making sure that this
9 is not something that's limited by where the
10 student is just for the student school or
11 geography or location. This is something
12 that states are making efforts to ensure all
13 kids have the ability to be have access to
14 and so that states are thinking about how
15 work with districts in schools to help
16 prepare kids for advanced mathematics earlier
17 and if they are prepared to give them the
18 opportunity to take those advanced courses in
19 eighth grade rather than the eighth grade
20 test. That's what tin tent of paragraph four
21 is trying to provide. This language here I

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1 think is similar to the discussion we ended
2 with that the state should describe it's
3 state plan and strategies to ensure that all
4 students in the state have an opportunity to
5 be prepared for and take advanced mathematics
6 course work in the middle school. We are
7 trying to clarify that this doesn't have to
8 give all student haves an opportunity to take
9 eighth grade mathematics that the states have
10 strategy ins place to help them be prepared
11 for advanced mathematics in school. The
12 opportunity to take that advanced course in
13 the math it's if they are prepared for it and
14 ready for that once they get to middle
15 school. That will open up for discussion.

16 Ms. Podziba: Discussion of paragraph
17 four?

18 Mr. Ahart: I appreciate the spirit
19 of this reg although the word ensure I find
20 problematic as well as the I supposed, I am
21 assuming that the Department made the

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1 advanced mathematics is defined whatever end
2 of course assessment the state has. If
3 there's of course an assessment for algebra
4 that would be considered an advanced course?

5 Mr. Rooney: We didn't define. The
6 way the statute defines it is this an option
7 and in fact students are taking the course
8 that leads for that test in eighth grade
9 whatever that maybe. It could be algebra or
10 geometry they could take that test in place
11 of the eighth grade test. It leads to the
12 state's discretion to have enough courses to
13 test what that end of course test? Students
14 who take that course related to that test in
15 eighth grade can do that in place of the
16 eighth grade test.

17 So I guess what I am finding most
18 problematic is that there are I am sure in
19 many districts multiple levels of Mathematics
20 taking by eighth graders depending on skill
21 ability and preparation and so forth? If

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1 geometry for instance were the high school
2 end of course assessment that states use and
3 you have eighth graders taking it. I would
4 hate for that to be that we would have to
5 demonstrate somehow that all of our students
6 could take that if they so chose. That's
7 where the insurer comes in is making it seem
8 like it might be not possible I guess to
9 ensure that all kids can take that advanced
10 level.

11 Mr. Rooney: That's not our intent.
12 Our intent is that if students are ready they
13 have the opportunity to take that higher-
14 level math course.

15 Mr. Ahart: I appreciate the
16 attention but ensure is problematic for me.

17 Mr. Rooney: Do you have a proposal
18 for alternative language?

19 Mr. Ahart: I am not sure. Ensure is
20 be confused a lot encouraged perhaps or that
21 there's an articulated pathway or something

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1 that of that stretch. I think you are not
2 getting at tracking students, which I think
3 all of us try to avoid.

4 Mr. Wilbanks: First of all the two
5 operative words there I think are ensure and
6 then opportunity I am put ago lot of focus on
7 opportunity. I think that's what the
8 Department means here. I think if you could
9 use I think we all agree that all students
10 should have the opportunity that's not that
11 should not be debatable. The ensure becomes
12 problematic if you read that as everything
13 after that has to take place. I think that
14 the phrase or the term with a term
15 opportunity does say that we don't that you
16 are not saying that it has to be, has to take
17 has to take advanced courses. If that's the
18 case I concur but otherwise I do not. That's
19 a heavy lift I'm not sure that's even
20 possible.

21 Ms. Ricker: I don't know if this is

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1 helpful Thomas, but if you took out to ensure
2 that and just replaced it with the word for
3 the state describes in its state plans it's
4 strategies for all students in state or if
5 that change it is meaning in it too? I will
6 just offer that. Take out the phrase to
7 ensure that and replace it with the word for.
8 So it's the state that describes in its state
9 plan it's strategies for all students in the
10 state to have the opportunity again, just
11 offering because I don't know if that change
12 it is meaning?

13 Ms. George: I just really wanted to
14 reiterate and I agree with Thomas and
15 Alvin's' point. The spirit of this is very
16 very important and to Alvin's' point to
17 opportunity I think it's key particularly for
18 students of color who traditionally don't
19 have or attending underserved districts or
20 under resourced districts where they don't
21 have access to some of these courses. It

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1 really is too important to promote access. I
2 want to flag the last civil rights data
3 collection that issued that show a quarter of
4 high schools with the highest percentage of
5 black and Latino students do not offer
6 algebra two. There's a real disparity in
7 terms of -- course that is students have to
8 take. However, I do support the ensure
9 language. I think it's very key to really
10 urge states to take action and to promote
11 equity to opportunity this access to
12 opportunity it's not a requirement. It's
13 just a strong emphasis on promoting this
14 opportunity. I think again that's the spirit
15 of this law to ensure access and so I support
16 this language.

17 Mr. Evers: This may not fit exactly
18 in that spot but I heard that in previous
19 comments that we just heard the word promote
20 several times I would be okay with promote
21 replacing ensure.

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1 Ms. Briggs: I agree with the idea
2 that the language needs to be tweaked a
3 little bit because otherwise you can imagine
4 that this requirement is saying to the state
5 hold on let me back up. This is intended to
6 address exceptions to what's expected in
7 eighth grade and to then have the state go
8 back and describe well yes the succession
9 happens because kids take algebra 1 in eighth
10 grade. The state plan is eighth grade
11 algebra and something else. I feel like
12 there's an opportunity there to sort of have
13 the state explain that they are doing
14 something that they are not. I mean the plan
15 for the state is to have eighth grade math.
16 And then something else you know then they go
17 through the sequence of high school. This is
18 an exception carved out for students more
19 advanced. I think the balance is between
20 that ideas of allowing for the exception
21 providing the appropriate protections while

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1 understanding most students are going to go
2 through normal or different sequence. I like
3 kind of changing this language a bit on that
4 front.

5 Mr. Rooney: I think we appreciate
6 that comment that has been made. We will
7 offer another suggestion for the group to
8 consider. Instead of the word promote we
9 could say provide because the state describes
10 in its state plan it's strategies to provide
11 that all students in the state have -- sorry
12 delete that. Provide all students in the
13 state the opportunity to be prepared for and
14 to take -- we will delete ensure that and
15 have.

16 Mr. Hager: I was going to echo Janel
17 and respond to Kerri. The issue in many
18 schools of students with poverty they don't
19 offer the class. Even if there's student
20 that is could excel they don't have the
21 opportunity that's why it's important this

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1 issue and how we tweak it is one thing but
2 the issue is extremely important.

3 I have three proposals on the table
4 can I get a sense of the group do people like
5 promote is there a preference for provide?
6 Or is there a preference for taking or just
7 for its plan and strategies for all students?

8 Mr. Ahart: Can I offer one more?

9 Mr. Hager: Sure if it's the winner
10 you can.

11 Mr. Ahart: I would let's see if I
12 don't duplicate it the states the state
13 describe ins it's state plan it's strategies
14 to assist local agencies in the agent -- to
15 be prepared for and answered mathematic
16 course work in middle school. I appreciate
17 where there's situations where it's not
18 available but I can tell you that we are
19 trying to make algebra one the standard in
20 eighth grade in my district. We are not
21 there yet. We are doing that by back mapping

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1 all the way to pre-K but right now even
2 though we are doing everything we can think
3 of I can't ensure that every single one of
4 those students will legitimately have access
5 to algebra one in eighth grade. If the real
6 issue is we can't take advanced course work
7 in high school I don't know if that this is
8 the way we fix that.

9 Ms. King: I totally understand
10 Thomas the general point that most of what's
11 happening is LEA's are not funded by their
12 own state adequately and that's the larger
13 barrier. I think that does change the
14 meaning the opportunity is provided to the
15 students versus provided to LEA. There's
16 disparities within LEA's. In the context of
17 proposal tons table my preference is that
18 current language I'm also comfortable I think
19 with provide and then as well. I don't know
20 what happened to Mary Cathryn's I thought
21 that also worked? Number 3. Okay. That's

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1 right for all students to have -- I think
2 that also works for me. I think I mean let's
3 be clear this is not required that time you
4 have demonstrated right? This is a plan to
5 ensure so just as you talked about within
6 your own LEA or your own plan is to achieve
7 this and this is just a matter of state
8 widening that effort as well. And one would
9 assume that in order to do this the state is
10 going to have to provide mission support to
11 LEA's in order for this to happen.

12 Ms. Podziba: For or provide is
13 something you can live with?

14 Mr. Ahart: Not really that feels
15 like the ESSA is telling the states the
16 standard what eighth grade math should be.
17 It seems to go a field from what the original
18 statute states.

19 Ms. Podziba: Let's get others in
20 here.

21 Ms. Jackson: What do you think if

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1 you added the word provide to your option?
2 The state describes in its state plan it's
3 strategies to develop and provide
4 opportunity. I don't know if that changes so
5 that way you have both the LEA's and
6 students?

7 Mr. Rooney: Sorry I was going to
8 offer a slightly different suggestion but
9 maybe I will put that down and see how people
10 want to respond to Audrey's version?

11 Ms. George: I just wanted to push
12 back a little bit on that proposal Audrey
13 because it keeps emphasis on the LEA's
14 instead of really emphasizing access and
15 opportunity for the students, so while I do
16 support the provide language I really think
17 ensure is stronger again, this is an
18 exception. It's not promoting the standard
19 for eighth grade it's a narrow exception. We
20 want to ensure all students have access to
21 the foundational courses and the opportunity

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1 to exercise this option.

2 Mr. Rooney: Kay and I were
3 conferring. We had an alternative. I am
4 trying to fit into what Thomas said which is
5 not inconsistent with your suggestion. I
6 don't have the wording worked out fully but
7 somehow to get to Janel's point about
8 disparities if we could add that to this
9 without I am not trying to make it too
10 convoluted. The state describes in its state
11 plan it's strategies to assist districts in
12 implementing strategies to address
13 disparities. The idea I think is right but
14 we need to play with the wording. I within
15 the want to get at both points at Audrey and
16 Janel and Thomas was saying.

17 Mr. Ahart: I think I may be
18 misunderstanding what ensure means. Does
19 ensure in your mind mean for anybody who's
20 promoting that term mean that algebra in
21 eighth grade is offered is that what a school

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1 would have to do to ensure the students have
2 access?

3 Ms. Podziba: How are people
4 interpreting ensure? How would that look
5 like Janel, is that something you can help
6 with?

7 Ms. George: I think of ensure as
8 trying to secure opportunity that's how I
9 think of ensure. This is an exception this
10 is just describing the strategies to open
11 that access for opportunity. I think again
12 that's consistent with the purpose of the
13 ESSA. Again, if we look at the underlining
14 purpose I don't know if there's language in
15 the preamble we can include to get to that
16 point. Again, I think if we leave the
17 language as is and that the first proposal
18 with ensure again, that's a spirit of
19 ensuring access in underlying that including
20 in that is hopefully addressing the
21 disparities. I think that's part of the

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1 parcel of trying to secure access.

2 Ms. King: Yeah, I just wanted to
3 flag one sort of in the context of the
4 disparity thing. I think this is also
5 important we know a lot of course act
6 disparities are on the basis of rural schools
7 so just making sure that middle class, white
8 non-disabled communities in rural communities
9 also have access. I want to add that issue.
10 I think Thomas there's lots of different ways
11 to ensure access. I think this is I think as
12 you had said this is not the place to be
13 talking about what courses are offered school
14 by school LEA by LEA. I think this is about
15 moving towards a place in which all
16 individual children have access whether it's
17 through distant learning or other
18 opportunities. I think it's for reasonable
19 expectation is that if the state as part of
20 the state decision as Tony mentioned this is
21 the state's discretion whether to participate

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1 in this or not. If the state's discretion is
2 moving toward providing for some students
3 opportunity shouldn't they move toward
4 providing all students opportunity?

5 Ms. Podziba: Do you want to respond?

6 Mr. Ahart: I do believe if you would
7 if you been through a title one audit. I
8 don't know how an auditor is going to define
9 ensure? I can throw every single student in
10 algebra one in eighth grade and do a horrible
11 disservice to some of them. To me ensure
12 sounds like guaranteed I don't know how we
13 can adequately do that and still be right by
14 all of our students when it doesn't seem like
15 enough clarification on this.

16 Ms. Podziba: We are working on
17 ensure.

18 Mr. Evers: I will double down on
19 that last comment. In Wisconsin we would be
20 ensuring something that we can't do. We
21 would be describing strategies to ensure that

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1 we cannot do under law. And I just think it
2 puts and I don't think we are particularly
3 different in that, so I just think the word
4 ensure in this situation is something that
5 certainly isn't within congressional intent
6 but it is also something that we as a state
7 and in Wisconsin we couldn't ensure that. We
8 would be describing strategies that would not
9 be in compliance with our law.

10 Mr. Rooney: I just want to take a
11 minute to remind people that this was
12 language that states, it was included in the
13 ESEA program that states could take advantage
14 of this prior to -- in that place we asked
15 states to tell us how they were trying to,
16 how they were ensuring there were options for
17 kids if they were ready to take advance
18 course in middle school. States often
19 talked about data they had that showed course
20 taking by parts of the state but more likely
21 they talked about policy in place or

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1 distance learning opportunities they had or
2 partnerships they were helping facilitate our
3 districts or facilitating with community
4 colleges that was acceptable information to
5 address this question for what it's worth. I
6 do think that in the last example I think
7 Thomas' example, I do want to remind us that
8 this is all of these proposed regulations are
9 around the state requirements and I don't
10 want us to get lost into what the districts
11 are being asked to do. I do think we want to
12 reframe that last bullet if we were to keep
13 it in here the state describes an in state
14 plan, sorry the last two, the state describes
15 in its state plan it's strategies to develop
16 and provide for opportunities before delete
17 the assisting LEA's because that mean really
18 this is about what states are required to do.
19 I don't want it to be about them us asking
20 for evidence about what the districts are
21 doing. We want it to be about what the state

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1 is expected to meet or comply with the
2 regulation that is we are proposing.

3 Okay. I have a new proposal and I
4 have got four comments. I am going to take
5 the comments then I am going to see if that
6 new proposal works.

7 Ms. Jackson: So I just wanted to say
8 that I appreciate Thomas' question about
9 ensure, and I actually really appreciate the
10 example that you gave Thomas about how you
11 are working back through to pre K and this is
12 a complex equity issue in many ways, but this
13 specific section I guess I am just saying
14 that all of the work goes down to equity and
15 access right? So to hopefully not let
16 ourselves get stuck here over one word which
17 is what the whole law is trying to do you
18 know and just to have it meet a balance of
19 policy that is targeted to that but also
20 realistic so it's not just like yeah we are
21 doing it and then you don't get to do it.

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1 Ms. Pin Ahrens: I appreciate what
2 Patrick said I was going to make the same
3 comment. If we focus on just states we
4 wouldn't have to worry about title one audits
5 at the district level. This is about states
6 ensuring -- maybe if we put ensure access.
7 This is about making sure that there is some
8 sort of progress towards creating
9 opportunities for students and I want to
10 point out there's no deadline for by which
11 all students have to have access. So there's
12 no deadline in here so I think it's quite
13 reasonable for us to focus on the fact that
14 this is about the state describing strategies
15 towards that goal that we all are in
16 agreement with.

17 Ms. Podziba: Derrick?

18 Mr. Chau: I want to double down on
19 Tony's proposal on promote. I think if I
20 were at the state level and asked to
21 demonstrate its strategies to ensure that

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1 students have the opportunity I might just
2 reference our state standards. Right?
3 Ensure actually ends up being a very passive
4 way of demonstration as I think Tony's
5 recommendation around promote would be more
6 specific strategies about encouraging and
7 actually getting more at ensuring. I don't
8 know it just occurred to me that promote
9 might actually be more aligned to what we are
10 talking about in terms of the inequity
11 happening versus ensure and ensure tends to
12 be very passive. A state could demonstrate
13 by saying look we have this rigorous state
14 standards we are assessing students and we
15 have our accountability system whereas the
16 word promote there I think it would be a
17 little more specific to the actual actions
18 aligned with tackling some of the inequities.
19 I wanted to put that point out there

20 Mr. Wilbanks: I concur with the
21 second option there the one that uses the

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1 word promote.

2 Ms. Pompa: I wanted to address the
3 concern. It seems like the conversation has
4 gone to a place where we are talking about
5 ensuring the state change the way it teaches
6 math or it's taking on a broader meaning
7 because as I read this if I am correct four
8 refers back to B which is if the state does
9 this. Is there a way to clarify that? I
10 think it's clear that it refers back to it,
11 but in case people aren't clear we are only
12 talking about the circumstance in this point
13 although I think as Audrey pointed out this
14 whole thing is about equity but in this case
15 we are not talking about an entire math
16 program we are talking about B.

17 Ms. George: I wanted to underscore
18 Audrey's point we are talking about equity
19 here the overall purpose of spirit in law. I
20 think that ensuring or providing opportunity
21 is consistent with that purpose. Again, I

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1 also want to echo Delia's point this is a
2 narrow exception. This is not the wide
3 standard. In my apologies if you flag this
4 already. I want to have an idea through the
5 waiver or do you have an estimate of how many
6 states my exercise this exception and then so
7 that's a quick question. To the point about
8 promote that actually if you are trying to
9 avoid adoption of something I think promote
10 is more urging you to adopt something where I
11 think ensure is more in line with the spirit
12 of the law.

13 Ms. Podziba: If you feel that you
14 are promoting is stronger do you support
15 that?

16 Ms. George: I support provide.

17 Ms. Podziba: Is there any dissent
18 with the word provide? Okay we will go with
19 provide.

20 Ms. Briggs: I will continue to
21 get -- we are trying to help

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1 explain -- normal course taking. I am
2 wondering if in the four what you want is for
3 students to have an opportunity to be
4 prepared for this exceptional circumstance
5 because we are I don't you are trying to say
6 to the state like we are going to give you
7 this exception but then we want you to
8 explain how this isn't an exception, so if
9 you could insert that notion of this is an
10 exception and that we are trying to make sure
11 everybody has an opportunity for that and we
12 are not trying to say move algebra one down
13 to eighth grade.

14 Ms. Podziba: I think to Delia's
15 point this whole thing is middle school
16 mathematic exception. Do you feel like it
17 needs to be restated in paragraph four? Just
18 tell me I will put that as a proposal and I
19 will see what others think about that?

20 Obviously it's not totally clear but
21 we spent 30 minutes talking about. I was

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1 trying to think about how do you wrestle with
2 this difference this is explaining an
3 exceptional activity.

4 Ms. Podziba: Could you just say that
5 proposal again?

6 Ms. Briggs: Just somewhere where
7 it's referencing this is an exception to the
8 standard the regular class.

9 Ms. Podziba: To take advance
10 mathematics course work in middle school,
11 which is an exception or do, you have some
12 language?

13 Ms. Jackson: What if you said the
14 state describes in its state plan, with
15 regard to mathematics exception with regard
16 to this exception whatever you want to say,
17 it's strategies --

18 Ms. Podziba: Kerri does that get at
19 it? Discussion on that proposal?

20 Mr. Hager: I was going back to the
21 question that either Delia or Janel had as

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1 far as I know it has double exception. You
2 have to provide the opportunity and you have
3 to offer an end of course assessment there's
4 only eight to ten state that is meet this
5 whole thing that we are talking about here.

6 Ms. Podziba: So what is that?

7 Mr. Hager: It mean there is' not a
8 lot of states.

9 Ms. Podziba: Are you okay with
10 Kerri's proposal, which is to add Audrey's
11 suggestion with regard to the exception.

12 Ms. George: That was my question
13 too.

14 Mr. Hager: Yeah.

15 Ms. Podziba: Any other discussion
16 with the regard to add to this exception, et
17 cetera, is there any dissent from that
18 proposal? Is there anything else in issue
19 paper two for discussion? Any other items in
20 issue paper two? Is there any dissent from
21 adopting alternate agreement on issue 2?

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1 It's 10 to 11 why don't we take a 15-minute
2 break.

3 Mr. Rooney: One housekeeping note.
4 There are nametags on the table for all of
5 the negotiators. I ask that you pick up your
6 nametag and wear it. Apparently it's easier
7 to get escorted to the tenth floor. If you
8 could go out in the table in the hall way and
9 pick up your name. For others in the room
10 also is everyone in the room apparently
11 hopefully in the room has a nametag. If you
12 have a nametag you don't need to be escorted.

13 Ms. Podziba: We are going to begin
14 our discussion of issue 4 A, it's quite
15 lengthy. I don't know if you want to give
16 introduction to certain sections or if you
17 want to give an introduction to the entire
18 issue paper but we will take it up section by
19 section

20 Mr. Rooney: Issue paper 4A has a lot
21 that's not gray. I want to explain why this

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1 looks fairly different than what you saw in
2 section two. I will start by saying that the
3 current regulations talked about
4 accommodations for students with disabilities
5 and then in the first section we spent a bit
6 of time talking about whether this is to
7 frame this whether it made sense about
8 accommodations for student that is are
9 eligible for accommodations so we had
10 actually reframed all of this issue paper in
11 the proposed regs going into sessions two
12 along those lines that talked about students
13 eligible for accommodations and then we spent
14 a bit of time talking about that. I think
15 there's discussions about eligible versus the
16 word entitled. That caused us to go back and
17 yet again reconsider how this part was
18 framed. We have come up with this version of
19 how we are describing the intro part to this
20 issue paper and this is the beginning part of
21 200.6 where we are talking about how we

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1 include students with disabilities in the
2 assessment system. I wanted to give you that
3 frame. The new what starting right from the
4 very beginning on the top of the page two of
5 the issue paper is we wanted to be clear this
6 is now talking about students with
7 disabilities in general and that the
8 assessment system must include all students
9 with disabilities in the assessments then the
10 broke An out into three different pieces to
11 describe who are the children with
12 disabilities we are talking about in this
13 section of the regulations. That would be
14 this is not new. All children with
15 disabilities can define under IDEA and of
16 those two students those with the most
17 significant cognitive disabilities as defined
18 by the IPE teams which we clarify in
19 romanette two. Number three students with
20 disabilities covered under acts and title two
21 of the American with disabilities act. Right

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1 below that is a new piece we added is A2
2 which is how those students identified right
3 above it are then included in the assessment
4 system. For students in romanette one and
5 three those students should be taking the
6 general assessment of what Romanette 2I says.
7 Below that romanette two sorry I hope I am
8 not confusing you with my romanette two.
9 Romanette two toward the bottom of page two
10 says if a state has adopted alternate
11 achievement standards with the students with
12 the most significant cognitive disabilities
13 those students can either take the general
14 assessment or alternate assessment aligned
15 with alternate achievement standards. Trying
16 to layout the expectations that states may
17 create alter mate assessments based on
18 alternate standards. Only students with the
19 most significant cognitive disabilities may
20 take those assessments the states an IPT
21 students can determine those students with

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1 cognitive disabilities take the general
2 assessment or alternate assessment. I might
3 make sense about how refrained just what's
4 here on page two this A.

5 Okay. Should we open up for
6 discussion or just questions?

7 Mr. Rooney: Questions will be fine.

8 Ms. King: Yeah I think the new
9 structure is much more understandable so I
10 appreciate that. It's really clear. I
11 wanted to make sure that I am understanding
12 this right, so only students with the most
13 significant cognitive disables can take the
14 alternative assessment. It it's still at the
15 discretion of the IPE team whether or not
16 they take that alternate assessment.

17 Ms. Goings: I just wanted to clarify
18 that IEPT teams do not identify students with
19 mental disabilities. They develop a plan for
20 disabilities. It's a multidisciplinary team
21 that actually identifies that.

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1 Mr. Rooney: I think the IPE team is
2 the one that makes the decision about the
3 alternate assessment or not I was talking
4 about romanette 2.

5 Ms. Goings: I am reading with the
6 students with the most significant their
7 individualized program teams identify
8 disabilities, which is the IEP teams. Maybe
9 I am not getting it?

10 Ms. Podziba: Your clarification is
11 not the IEP teams?

12 Ms. Goings: They develop the plan
13 and the program and they would be the one
14 monitoring the assessment. The
15 identification of students with disabilities
16 it's the actually multidisciplinary team
17 which could be made up of IEP team members
18 but not necessarily.

19 Ms. Podziba: Who else might it
20 include?

21 Ms. Goings: It varies from state to

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1 state but it definitely varies.

2 Mr. Rooney: Is it about verifying
3 the language is that your concern?

4 Ms. Goings: Significant cognitive
5 disabilities or identified by your IEP team
6 from among the students maybe I'm not getting
7 it. I am thinking it's the -- team that
8 identifies the student.

9 Mr. Rooney: I'm trying to think of a
10 way to clarify it. I think we intend this
11 piece to be is that the IEP team if the
12 student is the most significant cognitive
13 disability then they determine whether they
14 take that assessment or not. It doesn't
15 quite say that. Maybe we need to clarify
16 that language in here? I don't know if
17 anyone has a proposal otherwise we can try to
18 consider if there's a way to clarify Regina's
19 point and come back with something. Okay.

20 Ms. Podziba: So we understand that
21 the Department will work on that

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1 clarification.

2 Mr. Hager: Maybe just move up the
3 IEP team to the front of this the IEP shall
4 identify the students who -- I am not giving
5 exact language I might not be too hard to do.
6 We probably shouldn't worry about it now.

7 Mr. Rooney: What if we delete it had
8 reference to IEP teams?

9 You could put that reference up above
10 in the assessment team piece to romanette two
11 A and B. That's where the IEP team is
12 engaging. They are not engaging in the
13 identification to Ms. Goings' point.

14 They are identifying the child. It's
15 the only thing covered here

16 Ms. Briggs: But put it in the
17 assessment part where Regina is right where
18 right now it says it's the IEP team that are
19 identifying the kids with the significant
20 cognitive disabilities. It's the --

21 Ms. King: They are identifying the

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1 student as a cognitive disability as well.

2 IEP teams are not identifying them
3 all the multi-disciplinary teams are. IEP
4 teams write the plan. They would be writing
5 the assessment piece of it.

6 Ms. King: Is not about whether or
7 not the child is eligible for services among
8 those children that identified as eligible
9 for services which among those children are
10 those with the most significant cognitive
11 disabilities therefore eligible for
12 participation.

13 Ms. Goings: I get that it reads
14 confusingly that's what I am saying.

15 Ms. Podziba: There's one of the
16 points there's not a disagreement a need for
17 clarification. We will ask the Department to
18 bring something back to us for that. Are
19 there any other questions or similar
20 clarifying comments on page two would you
21 like to keep going, Patrick?

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1 Mr. Rooney: Moving on to page three
2 where we talk about appropriate. The first
3 thing I want to highlight is that you can see
4 the underlined in the second line of this we
5 talked about a student with a disability. As
6 we change the language in A we just talked
7 about we now made some conforming changes
8 throughout this proposal to no longer talk
9 about students eligible for accommodations
10 and just talk about students with
11 disabilities which we now define that under
12 A. So where we talk about that they need to
13 write appropriate accommodations such as
14 inoperability with assistive technology we
15 added a clause consistent with national
16 recognized accessibility standards. This was
17 a point that Ron made in a different section
18 of the full package in the last session that
19 we wanted to be promised to think about and
20 come back with where states have to be
21 ensuring that their assessments are

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1 consistent with nationally recognized
2 professional standards as part of peer review
3 where they are looking at accommodations an
4 assistive technology that they should be
5 making sure they are consistent with national
6 recognized standards also. We added that
7 here I think that's an appropriate place to
8 consider that. Then we say whether our
9 administrative, we added a reference to A two
10 which is a new piece we talked about how you
11 identify which assessment is students with
12 disabilities are taking whether the general
13 or alternate assessment? Then moving to the
14 next section the two toward the middle of the
15 page we spend some time talking about this at
16 the last session also where the state must
17 develop disseminate information on promote
18 the use of appropriate accommodations and I
19 think there might have been a few of you
20 about a comment that making sure they are
21 making that information available to parents

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1 in schools so we have that clause now there
2 that they dropped the information on two at a
3 minimum schools and parents and promote the
4 use of accommodations to make clear they
5 should be disseminating that information to
6 schools and parents romanette two below it.
7 This is the one we talked about in the room
8 this should look familiar to you all the of
9 the individuals involved in the assessment
10 which maybe more than general and special
11 education teachers support personal and other
12 appropriate staff and they should be
13 receiving the necessary training to
14 administer the assessments including as
15 necessary the alternate assessment which is
16 again to capture the conversation you had in
17 the room in a session two that they should be
18 training school should be training all the
19 staff that are administering the test and
20 that may differ between the alternate
21 assessment and general assessment it may not

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1 be all staff involved. Hopefully that looks
2 consistent with the conversation you have.
3 And then moving to section C which is at the
4 bottom of page three there's some additional
5 language you proposed if you turn to page
6 four so this is about if states have
7 developed alternate standards. Number three
8 states individual -- we proposed language
9 that the group not like in the last session
10 we had proposed alternative language to come
11 back again because we do think it's helpful
12 to clarify by measurement of student growth.
13 We proposed this language at the top of page
14 four romanette three in order to be
15 consistent on growth ton alternate assessment
16 and growth on the general assessment. We
17 have proposed the same language in the 200.2
18 of the fall package where we talk about the
19 states permission to measure student growth
20 on the general assessment also that if they
21 do measure growth it should be a reliable

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1 measure that all achievement levels to assure
2 that the assessment results improve student
3 instruction. I am happy to keep going on
4 this section. The next piece to discuss is
5 actually on section D which starts from the
6 bottom of page four. This is the state
7 guidelines. If the state has adopted
8 alternate achievement standards there's been
9 a couple changes to this. The first one
10 showed up on the top of page five in Arabic
11 number one. This is I think it might have
12 been Thomas that made this suggestion in the
13 last session to make sure we are being
14 consistent with the ESSA guidelines an IDEA
15 and we exclusively called out 6-12 A of IDEA
16 to be clear that's where the guidelines occur
17 in IDEA so these guidelines are intended to
18 be read together not something separate or
19 uncoordinated between those guidelines. Then
20 the next piece I wanted to add or I wanted to
21 mention if you look under Arabic number three

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1 in the middle of the page we added the
2 consistent with 20.2 E that's the language we
3 just talked about. I wanted to point it out
4 to you about notice to parents being in a
5 language they understand in a uniformed
6 format so that it shows up here as well.
7 Number 7 from the bottom of page 5. I will
8 take a second to describe this. We had
9 proposed deleting this in session two and
10 then we are proposing adding it back. I think
11 my purpose to proposing to delete it in the
12 last session was that we felt that it was
13 duplicative very similar language already
14 appear if you look back at page 3 the
15 romanette I that's in the middle of the page
16 which is about making sure that they provide
17 information about accommodations on
18 assessments to all students so that all
19 students can be included in the assessment
20 system. We thought that it's duplicative to
21 keep it here in retrospect we think it's

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1 wrong. It's important to keep number 7 here
2 on page five. This is taken from the statute
3 if states developed alternate achievement
4 standards they should be specifically
5 providing information about accommodations to
6 ensure that students with significant
7 cognitive disabilities are not being put into
8 the alternate assessment inappropriately and
9 the language is that this is focused on
10 making sure states are providing guidance and
11 supports for districts and schools and IEP
12 teams to increase the number of kids with the
13 significant cognitive disability who is are
14 taking the general assessment that those
15 students shouldn't be taking the alternate
16 assessment in order to make this consistent
17 with the ESSA language we added this back in
18 so this is a particular piece focused on its
19 alternate achievement standards ensuring that
20 they are providing accommodations with
21 students with significant cognitive

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1 disabilities with general assessment. I am
2 going to stop there and not go into E yet to
3 see if people have comments up to that point?

4 Ms. Podziba: Questions or comments?

5 Ms. Pin Ahrens: On page 3 romanette
6 I where it developing dissemination schools
7 and parents can we ask consistent with 200.2
8 E.

9 Can you say that again?

10 On page three under romanette I under
11 number two romanette I where it says a state
12 must develop, disseminate information to a
13 minimum students and parents. I want to add
14 that it's consistent with 2000.2 E to
15 recognize that there's a lot of parents that
16 need to get that information in a language
17 other than English.

18 Ms. Podziba: I want to understand
19 Patrick, is it your sense that we are now
20 generating the text or do you want questions
21 at this point?

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1 Mr. Rooney: I would be open to
2 negotiating the text.

3 Ms. Podziba: I thought we might want
4 to do that section by section let's take that
5 proposal after maybe we can go back and --

6 Also negotiated text.

7 Ms. Podziba: Is there any dissent
8 from adopting Rita's proposal? Okay. So put
9 that in. So that it's easier for us to each
10 find where people are I propose that we start
11 with anything on page two which is paragraph
12 A.

13 Mr. Rooney. I didn't do E yet do we
14 want to hold that until the end?

15 Ms. Podziba: We can hold that.
16 There's a lot of discussion about that one is
17 there anything on paragraph A? I am going to
18 get tentative agreements on chunks so that we
19 isolate what we have to come back to. I know
20 that we need a clarification of A one

21 romanette 2 and the Department will develop

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1 that for us. Thomas?

2 Mr. Ahart: On A romanette 3 students
3 with disabilities covered under other acts.
4 Could right after in other facts can we
5 include for purposes of accommodations?

6 Ms. Podziba: Any questions or
7 discussion of that proposal?

8 Mr. Hager: That's already in there
9 under one the whole the Roman numeral one or
10 the number one, the number one students in
11 all assessments with appropriate
12 accommodations, so you already got whatever
13 the little sublet three thing A and B that's
14 part of the definition already. You are
15 basically saying the same thing twice if you
16 look up under number one this is all
17 assessments with appropriate accommodations I
18 think it's already in there Thomas. I may be
19 misunderstanding your question. This whole
20 section applies for the students for the
21 purpose of determining accommodations that's

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1 how I am reading it.

2 Ms. Podziba: If I could just say
3 what Ron is saying. The stem is a good word.
4 The stem of number one is the start for each
5 of the romanettes.

6 Mr. Ahart: Yes I understand that.

7 Ms. Podziba: Do you still want to?

8 Mr. Ahart: Yes.

9 Ms. King: I am confused by why that
10 is important what are you trying to present
11 that your worry is not

12 Mr. Ahart: I am just trying to
13 clarify it seems that we are asking for
14 clarifying language even if it's redundant
15 everywhere else. It seems that this would be
16 an appropriate place for that

17 Ms. King: I think --

18 Mr. Ahart: People seem to think the
19 general public is reading this stuff they are
20 not. I can tell you folks at the district
21 level have to revisit these things the more

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1 expeditious we can make it the better.

2 Ms. King: For purpose of
3 accommodation on assessment I would add that
4 or assessment of accommodation

5 Ms. Podziba: Is there a further
6 discussion of this proposal? Is there any
7 dissent from adopting this proposal? No
8 comments. All right any dissent from
9 adopting this proposal? Tentative agreements
10 and you get one last agreement in the final
11 review. Okay that's in there. Anything else
12 on paragraph A? So what I am going to ask is
13 a part from A one romanette two which is
14 Department will clarify is there any dissent
15 from adopting tentative agreement on A?
16 Okay. You will see how this will help us
17 tomorrow I promise. Okay. Let's go to
18 paragraph B we will try to do one two and
19 three. I think we can find out way. So I am
20 opening the floor for a discussion of
21 paragraph B.

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1 Mr. Ahart: I would move to strike
2 nationally recognized accessibility
3 standards.

4 Ms. Podziba: Where?

5 Mr. Ahart: Paragraph B line A.

6 Ms. Podziba: The fourth and fifth
7 line?

8 Mr. Ahart: Right. I would add
9 consistent with -- consistent with nationally
10 recognized accessibility standards.

11 Ms. Podziba: Can you say why?

12 Mr. Ahart: Because I don't know what
13 nationally recognized accessibility standards
14 are.

15 Ms. Podziba: So proposal strike the
16 clause consistent with national recognized
17 accessibility standards is there discussion
18 of that?

19 Mr. Hager: Yeah we had asked the
20 Department to be more specific here,
21 specifically where there's the WCAG and

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1 section 508 which kind of do have some,
2 section 508 doesn't imply but the provisions
3 can explicate what 504 would require.
4 Instead of being specific with what they are
5 talking about they want to be broader and the
6 laws and standards can change. The more
7 consistent and assessment is with
8 accessibility standards the more by
9 definition the interoperability there will
10 be.

11 The blue screen of death.

12 Welcome to assessing by computer.

13 We will have to go back to issue one.

14 We can keep going. We will deal with
15 technical issues.

16 Mr. Hager: The two go hand in hand
17 and the more the assessments are developed
18 it's kind of like another way of looking at
19 alterative universal design. The more the
20 assessments are developed with accessibility
21 standards in mind the more by definition they

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1 are interoperable with. It's looking at the
2 thing that is they are taking at day one
3 after having trouble and getting the
4 accessible technology they always use on the
5 assessments any computer adaptive test really
6 does not develop up front with those
7 accessibility standards in mind. You run
8 into the unfortunate experience where the
9 student is not demonstrating what they know
10 but they are demonstrating the frustration
11 with accessing their test with assistive
12 technology which is more specific, and then
13 the Department wanted to have more
14 flexibility so they went with the more
15 generic language.

16 Ms. Podziba: Thomas does that help?

17 Mr. Ahart: No.

18 Ms. Ricker: Does this mean the state
19 would be responsible for purchasing or
20 providing funds for a district to purchase
21 the appropriate assistive technology devices?

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1 Mr. Hager: The assistive technology
2 devices are covered by IDEA independently so
3 that the student would need, would be
4 determined by the IEP team. This is to make
5 sure that the AT that's been recommended for
6 the student they are able to use it on the
7 examinations. It's on the AT is separate.
8 The school district would be required to
9 purchase or obtain for a student through
10 other means any assistive technology a
11 student needed. This is making sure that
12 when they take the assessment we are
13 measuring what they know not their
14 familiarity with the platform or the problems
15 that they have had with the platform so
16 there's significant problems across the
17 country.

18 So the two streams would be one
19 tapping into IDEA for the device itself that
20 is used obviously consistently through tout
21 child's learning experience and then the

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1 second stream would be getting to design of
2 the alternative things on the drawing board
3 to make sure that it comes to the student
4 ready for the device?

5 Mr. Hager: The goal would be to make
6 it more and more interoperable. It's a Way
7 to make it interoperable.

8 The Goal is different than it must
9 provide.

10 Ms. Podziba: I am still dealing with
11 Thomas' proposal. Anything else ton proposal
12 and then I will see if there's dissent or
13 not? Is there anything on proposal to remove
14 consistent with nationally recognized
15 accessibility standards?

16 Ms. Briggs: I am reading that phrase
17 in the entirety of its clause this is an
18 illustrative example of how accommodations
19 are to play out. Just the consistency with
20 the standards strikes me more of a guidance.

21 Opportunity because just the way you were

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1 describing it Ron you had a very specific
2 standard that had a name. We all know that
3 different states do this differently,
4 different states are great at this and others
5 are not so great. I think this might be one
6 of the cases the idea is better placed in
7 guidance where you can explain what it means.

8 Mr. Hager: In the guidance we
9 described some of the things to flesh out the
10 concern of the vague term. The regulation
11 would include that in this language the
12 guidance could describe what type of things
13 what types of things would be appropriate to
14 make it work so the regulation has the more
15 general approach and then the more specific
16 the details would be in the guidance. That's
17 all I would suggest the concern that Thomas
18 is raising.

19 Ms. Podziba: Further discussion. Is
20 there any dissent for deleting this clause
21 consistent with national recognized

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1 accessibility standards for guidance? Ron,
2 you would? Is there dissent from keeping it
3 in? Is that a yes there is dissent from
4 keeping from this language? Okay.

5 Ms. Jackson: Thomas or anyone else
6 who would agree with that is there a way to
7 or I guess Ron as well like a compromise
8 language that we could consider so something
9 like instead of consistent with like in
10 consideration of --

11 In consideration of is that a
12 proposal of nationally recognized
13 accessibility standards?

14 Ms. Jackson: I don't know if that
15 makes sense?

16 Ms. Podziba: We are looking for some
17 language that everyone can live with on this
18 one.

19 Ms. Jackson: You want that in there
20 Ron to make sure that there's a higher level
21 of like people are really being thoughtful

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1 and informed about the way in which we are
2 doing it and then Thomas you are worried if
3 it's not clear how could it be something that
4 you are held accountable for?

5 Mr. Ahart: Yes.

6 Ms. Jackson: Is that your point Ron?

7 Mr. Hager: My point was to keep it
8 in because it's a critical piece of the
9 accessibility features of these assessments
10 but clarifying, I'm proposing which Thomas
11 and others are not happy with I am proposing
12 to make it clear in the guidance keep the
13 general statement in the regulation and
14 clarify with examples and whatever else you
15 would want to clarify in the preamble or in
16 the guidance.

17 Ms. Podziba: Let's see if Patrick
18 has an out for us.

19 Mr. Rooney: I don't. I am going to
20 point out the language above that we are
21 talking about that states must provide for

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1 accommodation such as interoperability with
2 assistive technology. I think this phrase
3 was intended to try to clarify what that
4 means whether that phrase is in there or not
5 states and this is a state requirement you
6 still have to ensure that they are providing
7 for interoperability with assistive
8 technology and I think our intent with this
9 language was trying oh to be clear by what
10 that could mean when states are having to
11 meet this requirement because that will be
12 part of our peer review process. I
13 understand your point I don't have a good
14 suggestion of how to provide that clarity.
15 If there's something else that can be better
16 clarified or do you think this would be
17 providing enough support for states and
18 districts understand what it means as opposed
19 to putting it in regulations. Our reason for
20 putting this phrase that nationally
21 recognized accessibility standards is that we

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1 assume the standards will change over time.
2 Right now they are the WCAG standards which
3 the Department of justice either developed or
4 helps develop. I don't think we can disobey
5 what that means over time. I think we use
6 the same phrase in general. We talk about
7 nationally recognized standards that's
8 understood to be the American psychological
9 association another groups there are testing
10 standards that is the gold standard. In this
11 case WCAG at this moment the national
12 recognized standards for accessibility.

13 Ms. Jackson: When we referred in
14 other places in regulation about you know
15 like the acts and that inclusive of 504 and
16 IDEA but we don't want to limit in case of
17 new acts I am wondering Thomas if we name it
18 had specific one that we talked about or you
19 know whatever comes after it if that's
20 possible if that's specific enough?

21 Mr. Ahart: I just feel like the

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1 statute says as Patrick just said the
2 appropriate accommodations interoperability
3 with the ability to use assistive
4 technologies -- it's in our interest to do
5 that if there's not shared understanding of
6 what is national recognized. That gets
7 tossed around a lot. Clearly on the
8 assessment issue there's not consensus on
9 that and I just want anything included to
10 provide greater clarification than what the
11 statute does and not to add more gray and
12 this feels like it's adding more gray.

13 Ron?

14 Mr. Hager: Only because the
15 Department didn't want to go the clarity they
16 wanted the gray. I am happy to live with
17 what they proposed.

18 Mr. Rooney: Is your proposal to be
19 clearer that we are talking about the WCAG or
20 I think your proposal is not that your
21 proposal is to continue to be there to strike

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1 that clause and just follow the language in
2 the statute.

3 Ms. Podziba: There was dissent to
4 the proposal to strike it and there's dissent
5 to keep it, so we can pass on it for now but
6 we are going to need to work this phrase
7 because neither had the consent of all the
8 members. Why don't we pass on that for now
9 and mark it as a point to come back to. If
10 people can think about that as we move
11 forward that will be great.

12 Ms. King: I had a thing for 3, B. I
13 am not sure if we are there yet. This is not
14 to change the meaning of this but we think
15 this is important. I want to add clarifying
16 language. I would strike "does not deny" and
17 insert that assures as. A state must ensure
18 this the use of appropriate accommodation any
19 student with a disability then insert has
20 student with a disability has the opportunity
21 to participate in the assessment and insert

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1 and participate in a way. Strike not and
2 then leave the rest of it so it would be a
3 state must ensure that the use of an
4 appropriate accommodations under this
5 paragraph assure that is any student with a
6 disability has the opportunity to participate
7 in the assessment and participate in a way
8 that is equal to the benefit afforded to
9 students that do not use such accommodations.

10 Ms. Podziba: Can you tell us why you
11 like that better?

12 Ms. King: I think it's easier to
13 read in the affirmative than the negative.
14 It's meant for the sake of clarity not trying
15 to change the meaning.

16 Mr. Rooney: I think we are
17 interested in hearing what others around the
18 table think?

19 Ms. Jackson: The only question I
20 have is if the language makes sense for
21 participate in a way that is equal to the

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1 benefit afforded I am not sure how you
2 participate --

3 Ms. King: The ensure is to make sure
4 it's beneficial to those with or without
5 accommodations, so there's two different
6 pieces right there's the piece about
7 participating at all because did the
8 accommodations allow you to participate. Not
9 only are you allowed to participate. You
10 don't suffer for having used an
11 accommodation.

12 I get that concept I don't get how
13 you are portioning that's equal to the
14 benefit. I am not good with the names of
15 parts of speech and all of that. The
16 reference to benefit afforded to students is
17 implying specifically the ability to use the
18 assessment score for the purposes of college
19 admissions. So participate in a way that is
20 equal to the benefit, I think it's important
21 to have I feel as though what you are

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1 suggesting is to take out the benefit
2 afforded --

3 Ms. Jackson: No, the benefit I think
4 it's just syntax.

5 Ms. Briggs: I think we ought just to
6 get to the benefit issue right now the first
7 half is assuring the student has the
8 opportunity to participate in a test. That's
9 not an assurance it's required so with or
10 without an accommodation so do you see what I
11 am saying. I know you don't mean it to be
12 optional you are assuring the student has an
13 opportunity to participate is not the same
14 thing as the student participating.

15 Ms. Rigling: What I am going to do
16 is the reason we use it had language we did
17 was because it is very similar to the
18 standard in the 504 regs and the ADA regs on
19 which we believe this provision is based. So
20 what we would need to do I think is to share
21 any alternative language with our office for

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1 civil rights to see if they think that we are
2 changing the meaning because we really did
3 try to keep it as close to the 504
4 regulations as we could.

5 Can I ask a clarifying question I urn
6 stood this provision to require that states
7 before adopting any new assessments ensure
8 that the full range of accommodations for any
9 student are available for that assessment is
10 that right and that by using the particular
11 assessment that those that may need the
12 accommodations on the assessment are afforded
13 the same ability to use that assessment for
14 all purposes right so we are talking about if
15 an assessment is used for purposes of
16 admission into college or college credit that
17 when a state includes that as a part of the
18 statewide assessment system that all students
19 are afforded the same right and benefits is
20 that right?

21 That's right. That second part is

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1 important if the state is using it for other
2 purposes they cannot provide an accommodation
3 that then provides a score that's used in the
4 states accountability system that would not
5 have the cannot be used in the same way for
6 other students that take the version without
7 accommodations.

8 Would it be appropriate to send a
9 couple of clauses here in separate romanettes
10 by chance I am wondering if you are trying to
11 do two different things this section and
12 there's connection going on within the two
13 separate within the Arabic number. If we
14 separate the two clauses it would be a little
15 clearer that you are trying to get it two
16 different objectives. I know that the
17 Department is going to come back with some
18 language here but I would offer that out and
19 it maybe less confusing to try to separate
20 this into two clauses.

21 Mr. Hager: That actually was what we

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1 had suggested last time that they do the two
2 clauses so you are right there with you.

3 Ms. Podziba: My understanding is
4 there isn't disagreement about this but that
5 Liz's proposal was to make it affirmative
6 rather than in the negative and the
7 Department has said that in order to do that
8 they need to take this back to others inside
9 so should we leave it at that for now?

10 Ms. King: The consistency with 504
11 ran ADA is incredibly important this is not
12 creating a new right but maintaining a
13 previous right?

14 Mr. Rooney: We might need or want a
15 little help in how we break it into two
16 clauses we are struggling on what those two
17 clauses maybe and how to make it any clearer
18 than it is now. I am open to suggestions
19 that people if we don't want to spend time on
20 it now. I can understand if we don't too if

21 Liz or Rich or anyone who has ideas on this

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1 if they want to write them down and give them
2 to us we are happy to talk to our colleagues
3 to see if there is a way to do that.

4 Mr. Hager: Liz jumped a little ahead
5 of me on the section before the romanette two
6 and three the romanette two talks about the
7 students placement team for the students
8 under 504. And well we thought it's hard to
9 there is no we always use the term section
10 504 team which doesn't exist in the actual
11 regulations I think you chose placement team
12 because it's the closest thing that you could
13 come up with. So maybe in the preamble or
14 guidance to talk about you know what you are
15 looking at here is, you know the provision of
16 104.35 C and maybe something about calmly
17 referred to section 504. I don't think it
18 has to go to the regulation I think it might
19 be helpful to have clarification to what is
20 meant there that might help without having to
21 rewrite it, and then in the romanette three

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1 maybe in the preamble like pursuant to the
2 ADA it doesn't have to be in the regulation
3 itself, but to make it clear that we talked
4 about a procedure so let's just you would
5 just keep it in the guidance as a suggestion.

6 Ms. Podziba: Thank you. Anything
7 else on paragraph B? All right, so we have
8 two outstanding items on paragraph B one is
9 the clause in B one consistent with
10 nationally recognized accessibility
11 standards. That is not acceptable to take it
12 out and it's not acceptable to leave it in as
13 is. That's going to need to be reworked.
14 Then on paragraph B 3 it's not a disagreement
15 about the concept but there will be an effort
16 to rework it in the affirmative rather than
17 the negative. Apart from those two is there
18 any dissent from adopting tentative agreement
19 on B? Okay, let's move to C. Alternative
20 assessments et cetera. Any discussion on
21 paragraph C? Any discussion on tentative

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1 agreement on paragraph C? We are moving to
2 five reporting. Why don't we start with page
3 four is there any discussion. I'm sorry I
4 missed six. Reporting is that small part.
5 Did I miss something somewhere? So yeah
6 let's open the discussion for paragraph C, 5,
7 6 and 7 which goes to almost the bottom of
8 the page. 5, 6 or 7 any discussion? Any
9 dissent from adopting tentative agreement on
10 5, 6 and 7? Okay moving to paragraph D state
11 guidelines? We will open the floor to all
12 paragraph D which goes up to page six the top
13 two lines. Ron?

14 Mr. Hager: D one we had Thomas had
15 put it in one spot, and I think you clarified
16 where it should go in terms of that phrase
17 consistent with. I thought we had talked
18 about in coordination with and if we didn't
19 get agreement on that language I thought we
20 did but I maybe wrong. Instead of consistent
21 within coordination with I had my notes in

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1 there from last time I wanted to see if that
2 was an error or not?

3 Ms. Podziba: Is it an error or did
4 you want to propose it?

5 Mr. Hager: I thought we had already
6 agreed on that.

7 There's a discussion to put on in
8 coordination with instead of discussion. Any
9 dissent from adopting that proposal?

10 Ms. Rigling: I just like to ask for
11 an explanation of what the difference is?

12 Mr. Hager: Well as Peter and Paul
13 basically when you look at section 16 I'm
14 sorry 612 A 16 C is talking about is
15 developing guidelines for the achievement
16 standards themselves in the process for
17 conducting the assessment. It's really not
18 talking about who gets the assessment. It's
19 developing the content of the assessment.
20 It's not quite, so you can say consistent

21 with but it's not a neat fit is why I would

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1 rather say coordinating it. It's two
2 different concepts that we are talking about.

3 Ms. Podziba: Thank you.

4 Ms. Rigling: I don't know I am
5 looking at 612 A 16 C and I'm having a
6 difficult time understanding the difference
7 in. I mean 612 C talks about a general
8 statement that say it is states have
9 developed or implemented participation of
10 children in alternate assessments that can't
11 participate with regular assessments each
12 with accommodations then there's changes that
13 estimate that said that the guidelines shall
14 provide for alternate assessment that is are
15 aligned with the challenging state academic
16 content standards an alternate achievement
17 standards and if the state has adopted
18 alternate achievement standards measure the
19 achievement with children with disabilities
20 against those standards.

21 Mr. Hager: The guidelines you are

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1 talking about here are not the assessment
2 guidelines but the achievement standards and
3 then you assess based on the achievement.
4 It's more focused on the achievement
5 standards to be developed that's what the
6 guidelines are referring to and that the
7 assessment would be consistent with those
8 guidelines meaning the achievement standards.
9 That's maybe --

10 Mr. Rooney: The one thing I might
11 add to this piece and maybe why we have a
12 slight preference for consistent rather than
13 coordination. We don't want to indicate that
14 there's two sets of guidelines if you say in
15 coordination with it sounds like two
16 guidelines. If you say consistent with it's
17 one U set of guideline that is make sure that
18 it's meetings section 612 of the IDEA and
19 also meeting this piece here being described.
20 That would be our pitch for consistent.

21 Ms. Podziba: Are you okay to

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1 withdraw the proposal.

2 Mr. Hager: Thank you.

3 Ms. Podziba: Is there further
4 discussion on paragraph D? All right is
5 there any dissent from adopting tentative
6 agreement on paragraph D?

7 Ms. Podziba: We are up to? E?
8 Patrick, would you like to do that?

9 Mr. Rooney: I would. E is the
10 definition with the students with most
11 cognitive disabilities. This is all under
12 lined because it was not an issue paper last
13 time. It's not different than we discussed
14 slightly different it's aligned with the
15 discussion we had in the issue in session
16 two, but it's primarily the same definition
17 that we had talked about as we left the room
18 in session two. We think it's important to
19 keep this definition in I appreciate Tony's
20 points about what this means in Wisconsin an
21 other states and we know that it may -- the

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1 definition but we think it's helpful to
2 include in the set a clear expectation for
3 these students and who these students are and
4 that students states say they are
5 implementing this definition will have to go
6 further to provide guidance down to schools
7 an IEP teams but having this base level
8 definition for who are the students with the
9 most significant cognitive disabilities will
10 be helpful to the field and IEP teams to help
11 understand who are the kids and what things
12 as states would take into account in defining
13 who these kids are and who should be taking
14 the alternate assessment. This came
15 primarily from the two groups of state that
16 is are designed new alternate assessments the
17 national center and state collaborative and
18 makes it and we did alter that slightly and
19 it fit into our regulatory framework but we
20 do think it's important to keep it here so we
21 haven't made major changes to that and we

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1 kept it in the regulations for our discussion
2 today.

3 Ms. Podziba: We will open it up for
4 discussion of E?

5 Mr. Hager: I will be the lead off
6 here. We concur with the Department that
7 it's very critical to have a definition and
8 we appreciate the attempt you guys made. I
9 want to reiterate what I had said last time
10 about this definition. We looked at in a
11 kind of a general way some kind of core
12 factors if you look at the LCM and SC
13 criteria the vast majority of states you have
14 already adopt it had criteria over
15 substantially similar criteria we are looking
16 at here raising the bar an raising the floor
17 for states that have adopt it had criteria
18 our goal is not to lower the standard. You
19 adopt it had YCM we would deem that to be
20 compliant with this definition. The
21 Department wanted to clarify that kind of

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1 language in their regulation that would be
2 great for us. We don't want to have states
3 lowering their standards and the goal was
4 here for the states that haven't got that
5 level and with this kind of approach that
6 they would raise their expectations. Is it
7 appropriate to have a definition at all?
8 Okay. You look add idea it lays out in the
9 statute the definition of a child with a
10 disability it lists a bunch of definition.
11 It lists a bunch of categories without
12 defining any of those categories except for
13 specific learning disability which they
14 specify because at the time the IDEA was
15 created there wasn't a definition they
16 created it for the purposes of IDEA. Every
17 other definition is in the regulations so you
18 have a very very open ended kind of thing
19 that the learning assume the disability is
20 XYZ and A through 13 definition or categories
21 and the regulations to find each one of

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1 those. We see it to be totally consistent
2 with ESSA to have a similar approach here you
3 have to determine a standard which is not
4 defined by anything else. We are looking at
5 in terms we would like to see a definition.
6 Having said that we have a couple concerns
7 with the definition as proposed. In E one
8 when you use the phrase intellectual
9 functioning I know that's used the statute
10 actually talks about significant cognitive
11 disability. We probably prefer to use the
12 statutory term of cognitive functioning and
13 then when you have adapted behavior what we
14 would like to see perhaps in either the
15 preamble or the guidance is and means and.
16 We have heard that some states have looked at
17 it as an or which is not intended but that
18 you know in other word this is someone that
19 has significant cognitive impairment. If you
20 have adapted behavior issue there is' no
21 impairment of the cognition that you don't

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1 qualify for this. I don't want to change
2 your definition in your regulation but would
3 make it clear in the preamble that we mean
4 both not one or the other. The third thing
5 is and this actually is picked up from what a
6 number of people said from the school group
7 and people from our disability community of
8 agreed that there probably needs to be a
9 little bit more that it's way it's written
10 would over identify students with
11 disabilities as eligible for this standard so
12 we would like to add another clarifying
13 clause so it would be another exception so
14 you have romanette one and romanette two and
15 three. We would add romanette three as an
16 additional clarifier when I read it maybe I
17 will try and read it slowly and I can read it
18 again if you want to try to get it on the
19 screen. Students with the most significant
20 cognitive disabilities do not include those
21 students who may with extensive, direct and

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1 individualized instruction and substantial
2 supports, sorry where are you? Who may with
3 extensive, direct individualized instruction
4 and substantial supports be able to achieve
5 the grade level academic achievement
6 standards over time? There's three prongs to
7 the LCM and NCSC standard and the last one is
8 the instructional prong. We don't want
9 students who have the opportunity with
10 significant support to master grade level
11 content to be eligible to be taking this
12 alternative assessment. We want to make it
13 very clear that just because student may need
14 significant supports with significant
15 supports students will be able to master
16 grade level content. We don't want that
17 student to be taking an alternative
18 assessment. That's an intent behind our
19 suggested amendment. From the disability
20 community side anyway we think we are adding
21 this additional sublet three that we would

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1 cover our concerns with a definition.

2 That's two proposals I am going to
3 take them up. Let's get a couple of
4 comments.

5 Mr. Evers: I am going to argue those
6 same proposals. It's a good example of why
7 it's difficult to define this in regulation.
8 We had two hits two separate times we
9 continue to add to it. I got the same
10 e-mails this weekend you need to have XY
11 and Z in here because it's inappropriate it's
12 going to over identify the issue of I don't
13 know if you mentioned this one Ron. Somehow
14 you are talking about safety that can be used
15 to keep kids out from being inclusive
16 environment. Some of the same things you
17 talked about I heard about and this is for
18 internally and external and we have been
19 talking about this for a month now and the
20 definition continues to change. I understand
21 completely why federal government hasn't done

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1 it for the last X number of years. I
2 understand completely why the subcommittee
3 that attempted to do it did not. I still
4 think given this that we need to look at an
5 alternative to having the express definition
6 in regulations, which is essentially putting
7 it into law, and it will be subject to if we
8 wait another week my e-mail box will be
9 filled to all the other things we should be
10 adding to this definition. That's my overall
11 concern and I can go over everyone Ron did
12 most of them. I am concerned about having it
13 in regulation period given that we have seen
14 it more weekly.

15 Ms. Podziba: One thing is I am
16 hearing is a proposal to delete. We can take
17 up that proposal quickly because I have a
18 hunch that there might be a little bit
19 dissent on that. If you don't want me to
20 take up that proposal we can try and work the
21 language and take upstart with Ron's

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1 proposals and take up additional proposals to
2 massage the language.

3 Mr. Evers: I would propose that we
4 eliminate the definition and leave the
5 guardrails in and the guardrails I believe
6 are romanette one and two.

7 The proposal is to delete E one but
8 not romanette two. Just that one paragraph?

9 Mr. Evers: Romanette one and two and
10 leave one and two because two -- I'm sorry
11 leave romanette one and two. Lead guardrails
12 and eliminate E one eliminate E two because
13 it refers to E one and leave 3. Okay so
14 eliminate paragraph E one an E two. Is there
15 a dissent from that proposal? Yes there is?

16 Mr. Wilbanks: I was going to say Ron
17 is normally extremely clear and in his
18 discussions but I think we each have problems
19 with someone who know as lot about it in
20 trying to define it. Is for that reason that
21 I don't think it ought to be defined. I

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1 don't see it as a huge issue. I think people
2 that do this as particularly especially IEP
3 teams are very able to do this and have done
4 it for years and IDEA did not find it the
5 essence committees did not define it and I
6 don't think we should.

7 Ms. Podziba: Are you re-proposing
8 Tony's proposal?

9 I am agreeing with Tony.

10 Ms. Podziba: We need to try to reach
11 consensus we need to work the language a bit.
12 Let me take Ron's proposals one at a time. I
13 will get to the other issues. The first
14 proposal is to delete intellectual and
15 replace it with cognitive. Can we have some
16 discussion of that? So it would read that
17 significantly impact cognitive functioning
18 and adaptive behavior. Any discussion of
19 that?

20 Ms. Briggs: Not only is it strange
21 to use the same word that we are trying to

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1 define?

2 Ms. King: I don't think it is. I
3 think we are being clear about cognitive.
4 One of the concerns we had about intellectual
5 is signaling the chimed with a disability is
6 being a necessarily that all kid who is are
7 classified as ID would necessarily be
8 included in alternate assessment and no kid
9 that was -- I think it's important we use the
10 cognitive not -- that we are not trying to
11 have any specific classification.

12 Ms. Goss: You may have answered my
13 question. I was under the impression they
14 just changed the terminology from cognitive
15 disability to intellectual disability?

16 Mr. Hager: It went from mental
17 retardation to intellectual disability that
18 was a change, so they changed it from mental
19 retardation to intellectual disability.

20 Ms. Podziba: Lisa is your comment on
21 this proposal okay? I will get to you. If

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1 there were to be a definition would anyone
2 dissent from changing from intellectual to
3 cognitive? Okay. All right. Let's look at
4 Ron's other proposal. The addition of
5 romanette three can we have some discussion
6 of that item? Mary Cathryn?

7 Ms. Ricker: Thank you. I am
8 wondering with the addition of this does that
9 mean that the standard assessment also must
10 be designed with assistive technology devices
11 that are nationally recognized in mind?

12 Mr. Hager: Actually that, the
13 language we are looking at earlier that was
14 the general all assessments not just the
15 alternate assessments it would have been for
16 both yes.

17 Ms. Evangelista: Yeah, I am thinking
18 on a school level if there were to be a
19 definition and I'm looking at romanette one
20 and two and I feel like those are more
21 tangible things we can looking at. Number

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1 three how do you define that? It's like
2 determining a student development which we
3 know is you know I mean there's lots of
4 factors so how could you say that this
5 student with instructions would be able to
6 meet the standards this one won't. I thought
7 we were supposed to be trying to meet the
8 standard with everybody. That would be very
9 very difficult. I think for us to determine
10 and predict the students development.

11 Ms. Briggs: I recall in the previous
12 one percent rule that there was a concept of
13 even with the very best instruction possible
14 that was part of the definition if I remember
15 that right this sort of feels like that
16 concept?

17 Lara Evangelista: I'm not sure in the
18 actual reg it was used in the preamble.

19 Ms. Briggs: I am synthetic
20 individual IEP teams making decisions on
21 behalf of individual students I am curious on

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1 how this new clause fits into all of that?

2 Ms. King: In support of the
3 importance of romanette three the goal here
4 is to make it very very clear that the child
5 is placed in an appropriate assessment
6 because that's what's appropriate for the
7 child. So to Lara's point that's the idea
8 here is that we are just trying to reinforce
9 we recognize there's children with the most
10 significant cognitive disabilities to whom
11 the alternate assessment is important those
12 children who have not been denied the
13 accommodations or supports they need?

14 Mr. Hager: And in response to
15 Kerri's point we are actually getting order
16 here. This is guidance for the IEP team. We
17 are not telling the IEP team what to decide.
18 Their job is to take the information about
19 the student how the student or what the
20 students needs are. That's what they do all
21 the time. They make, they look at a bunch of

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1 reports, evaluations and they decide what the
2 placement should be and what services they
3 should have and even whether it's IEP team or
4 other team someone make it is decision about
5 what the classification should be. Each time
6 they make these decisions they have
7 guidelines they use to help them in making
8 these decisions because they don't make them
9 in a vacuum that's really the same intent
10 here is to give them some guidance in making
11 it clear that lack of good instruction is not
12 a reason to put someone into the alternative
13 assessment. That's the intent.

14 Ms. Evangelista: If that's the case
15 then that's what it should say. Because the
16 student doesn't get there because I don't
17 know thousand word it. They shouldn't put in
18 alternate assessment because they didn't
19 receive the instruction that's afforded to
20 them based on their rights, but to say that
21 just sounds like we have to predict what a

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1 student's development is. I think that's
2 really challenging at the school level.

3 Ms. Briggs: I was going to comment
4 that the overtime piece is confusing to me.
5 Like I don't think that brings much clarity
6 the assessments given three through eight and
7 one in high school and I know these students
8 are allowed to be in school longer than that
9 time frame, so what's the over time is like
10 there is a time frame that we are thinking
11 about?

12 Mr. Hager: Well, first of all
13 although they are only assessed these grades
14 many times these decisions are made earlier
15 on. Once you are in this group it's you it's
16 kind the longer you go in that group in terms
17 of trying to get out of that group which is
18 one of the things we had in that
19 subcommittee. The over time means it may
20 take a while for them. They are currently
21 not at grade level this is a judgment call by

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1 the committee or IEP team. Anyway that is a
2 judgment call by the IEP team that as we look
3 at the student with appropriate instruction
4 each if it's intensive instruction they will
5 be available to, you know, catch up the whole
6 idea of the ESSA is to remove achievement
7 gaps so that's a concept that over time is
8 that they would be removing the achievement
9 gaps within the significant instruction, if
10 there's concern. We don't know for sure if
11 we have a definition.

12 Ms. Podziba: I think what I am
13 hearing if there is to be a definition that
14 this may need to be clarified a bit and so
15 would you like to withdraw it for now and
16 come back with an alternative.

17 Mr. Hager: I don't know if the
18 Department is interested in this and coming
19 up with language.

20 Ms. King: I am not sure I understand
21 the concern. Tweaking is a possibility but

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1 it would require more guidance about what is
2 not going to work in here as whether it's so,
3 is there a concern about the intent of this?
4 I mean for Lara to put on the table the idea
5 of if it cannot be because of a failure to
6 provide supports an instruction or something
7 like that you know in terms of the over time
8 is important because it may take a child more
9 than one year. It would be helpful to get
10 more feedback if we are going to reopen this
11 again what are the concerns?

12 Ms. George: I guess I had a question
13 for Lara. I don't know if it has clarifying
14 language in the preamble to just clarify the
15 real intent is to ensure that many students
16 as possible can take the general assessment
17 because this would be a rare alternate a rare
18 use, the alternate assessment would that
19 address your concern that this is more about
20 support and accommodations for the students.

21 Again, consistent with the purpose I don't

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1 know if that would be helpful?

2 Ms. Evangelista: I think it would be
3 helpful. I think changing that so it says
4 just that. They shouldn't be given the
5 assessment because they were not given the
6 instruction that they have a right to receive
7 based on the, you know the plan from the IEP
8 team. I think what's written there just it
9 doesn't say that to me. I mean looking at
10 it, it looks like we have to be thinking
11 about each individual kid and think about
12 whether they are able to reach the standards
13 and make sure they have all the instruction
14 and make predictions around that. I think it
15 could be confusing for a school or an IEP
16 team.

17 Ms. Jackson: I think with regard to
18 word submitting this I think we generally
19 agree ton idea and that it just seems that
20 people are concerned about how you would be
21 held accountable to this and how it would

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1 even function. I actually think a little bit
2 that I do agree that this there are many
3 students like I have had children come into
4 my classroom five grades below grade level,
5 and so people could say I don't know if they
6 would necessarily reach grade level over time
7 for the window you may end up getting more
8 kids than you need to protect clumped in. I
9 hear everyone agreeing on the idea.

10 One and two seem clearer than three.

11 Ms. King: A little more context IEPT
12 team has to project that which a child is
13 capable of all the time. Those are hard
14 decisions and we recognize that. It is
15 reasonable and expected within the context of
16 IEP team and the way it isn't throughout
17 other areas of a child's education. I think
18 the concern about this is the relationship so
19 if you look at one a child who requires
20 extensive direct individualized instruction
21 and substantial supports. I think the

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1 concern is that we want to Tony's point not
2 open this too wide. So we are talking about
3 children who require extensive direct
4 individualized instruction. Even among those
5 children that require that instruction
6 there's many of them or any of them who would
7 be able to participate in the general
8 assessment with accommodations, so those
9 children should not be included in the
10 alternate assessment. That's the concern of
11 narrowing the net that's passed under one
12 which is why romanette three is important.
13 We can talk about different romanette three
14 language. I think the concept of number
15 three is important. I am reluctant to be, I
16 feel as though simply saying that it cannot
17 be on the basis of a child having been denied
18 an education for which they are legally
19 entitled to which they are legally entitled
20 which I think is too vague, but I think we
21 can think about it a little bit more.

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1 I guess procedurally I can call the
2 question on this proposal and see if it's
3 acceptable. If it is we are done. If there
4 is dissent I can just kind of get a sense on
5 the concept and then if you are interested
6 that you would then go back and try and
7 refine that would you like me to do that to
8 take care of it in a consistent --

9 Mr. Hager: You are asking if it's
10 okay as is?

11 Ms. Briggs: I am just looking at the
12 criteria. What they have written isn't
13 exactly that. I am don't mean to dissent I
14 think I will because I don't think you are
15 getting at the right thing. They seem
16 different to me.

17 Ms. Podziba: Lara, did you have
18 another comment? If there were to be a
19 definition would there be dissent from adding
20 Roman three as proposed?

21 Ms. Evangelista: Yes.

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1 Ms. Podziba: Just getting a sense of
2 the group. Is there a sense that this
3 concept of further identifying who would be
4 taking this assessment is the group
5 supportive of the concept so that we ask Ron
6 and Liz to go back and refine it? Anyone not
7 supportive of the concept if there were to be
8 a definition? Okay. So I think it sounds
9 like it would be helpful for the two of you
10 to do that. Okay. New issue on paragraph E
11 and LISA has been waiting.

12 Ms. Mack: My point goes back
13 minimally if we find this to not be
14 acceptable minimally as a parent I believe
15 that the congressional intent was to make
16 parents partner as little bit more in
17 education and so at the very minimum I had
18 brought it up before I would like to see even
19 a definition can be taken from a
20 non-regulatory guidance that was in no child
21 left behind. Again, I really believe there

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1 needs to be some kind of definition a couple
2 of our meetings ago I use it had example of
3 when I was forecasting for my daughters
4 seventh grade class she wasn't being
5 recommended for an advanced science class and
6 when I asked why she's daydreams and all
7 kinds of those things even though she had an
8 A in the class so from my experience I said
9 this might preclude her from taking advance
10 classes in science later and his response
11 later was I didn't think of that. I don't
12 want to be sitting at the table as part of
13 the IEPT team without information not being
14 equipped to be able to be a partner in that
15 IEP process. I need to understand if my
16 child falls into that category and make
17 educated decisions in which direction we
18 should take and the ramifications of that.
19 At the very minimum I feel like there's a
20 definition and the regulatory child on the no
21 child left behind can be a source. Okay.

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1 Thank you.

2 Ms. Goss: As defined in the IDEA
3 it's not defined in the IDEA so I guess I
4 find it troubling to some to find something
5 in undue law just because we haven't
6 reauthorized another law yet. I guess that's
7 just kind of my question and statement. If
8 you are going to define it, it should be at
9 the state and local level not at the federal
10 level.

11 What we have to have support no
12 definition and support to have a definition.
13 We are working both of those angles. Process
14 wise we are trying to come up with the best
15 definition possible and see if that responds
16 to the concerns that people are raising about
17 having a definition and we will see where
18 that takes us. Lisa's offered I think an
19 alternative proposal that if this definition
20 that we are trying to work doesn't get to a
21 place where people are comfortable with it.

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1 Is it possible to use a definition that's
2 used in the past in guidance from no child
3 left behind? I don't know if we have that
4 available?

5 Mr. Rooney: Two points of
6 clarification. It's not defined anywhere.
7 The point Tony has been making is our current
8 regulations for no child left behind do not
9 define students with the most significant
10 cognitive disabilities.

11 Ms. Podziba: Do you have guidance?
12 I thought that was Lisa's point. Is it
13 defined in guidance?

14 Mr. Rooney: No, it is not. I am
15 making sure. No, it's not. I would say to
16 Lynn's point. I know you want to respond.
17 We try to come up with a definition the
18 children with the most significant cognitive
19 disability which is a subset. This is why we
20 refer back to IDEA in this proposed
21 definition. This is a subgroup that exists

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1 for the purposes of the alternate assessments
2 so it's not a group that there are categories
3 of disabilities that are defined for services
4 for students with disabilities under IDEA and
5 this is the group of students for whom an
6 alternate assessment is appropriate. This is
7 where we are defining what the states
8 alternate assessment should be and so that
9 would be the purpose for providing this
10 definition here where this group comes into
11 existence in order to, but where you need
12 that and information about who these students
13 are so you can identify who should take the
14 assessment to why we propose the definition.

15 Ms. Podziba: Lisa did you have
16 something?

17 Ms. Mack: I am saying I do have that
18 guidance it does for clarification the states
19 responsible to define but it does give
20 guidance so if we can just have criteria
21 guidance or something specified in the

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1 regulatory language I don't know if you want
2 that in red or I can pass it to you to see
3 what that was?

4 How long is it? Is it more than a
5 paragraph?

6 No.

7 Ms. Podziba: Read it out for us
8 then.

9 Ms. Mack: It says the Department
10 intended the terms students with the most
11 significant cognitive disabilities to include
12 that small number of students who are one,
13 within one or more significant cognitive
14 disabilities oh wait who are one or more of
15 the existing categories of disability under
16 the IDEA and then in parenthesis that is awe
17 autism multiple disabilities traumatic brain
18 injury, et cetera. Number two the cognitive
19 impairments prevent them from obtaining
20 standards even with the very best
21 instruction.

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1 Ms. Podziba: Patrick, can you give
2 us some context for that?

3 Mr. Rooney: Thank you for that I
4 forgot about that. I believe that was from
5 frequently asked questions which is
6 non-regulatory guidance we put out at the
7 time we released the guidance or the
8 regulations around alternate assessments for
9 this population. I think that's where that
10 came from and I this' all we said on the
11 cognitive disabilities is that sentence. I
12 have forgotten on that

13 Ms. Podziba: Thank you.

14 Ms. Goss: Has there been issues I
15 don't understand why it shouldn't remain in
16 guidance?

17 Mr. Hager: The issue is that there
18 are a number of states that their criteria
19 have significantly below everyone else is.
20 That's really the concern we have is raising
21 the floor for those relatively small number

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1 states but they are still there and their
2 criteria are not. The other thing in terms
3 of what I think the Department tried to do is
4 take this you know long protocol and shorten
5 it down. Well our counter part said you
6 shortened it too far we didn't want to go the
7 full-page approach. That's why we are trying
8 to truncate concepts into a smallest amount
9 of words as possible to still meet the goal.
10 That's why we chose the language we did to
11 try and capture the essence of the LCM and
12 NCSC guidance without giving a full blown
13 thing.

14 Ms. King: Just an answer to the
15 question under NCLB the law was silent on
16 this. There's regulations creating the one
17 percent path and there was this FAQ and
18 guidance building it out. The one percent
19 cap is in law. Congress in the new law
20 elevated the importance of one percent cap by
21 moving it out of regulation and into the law

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1 then it seems appropriate that would elevate
2 the language around and the clarity around
3 who these children are from guidance into
4 regulation. I think we have some concern
5 about that particular wording. I did want to
6 say reinforcing again the regulation is
7 everything is elevated because of the way
8 that Congress reauthorized the law.

9 Ms. Jackson: I just wanted to see if
10 we can have it sounds like everyone agrees on
11 the romanette one and two. It's the other
12 part that is we have to work on whether they
13 are there or not or that we have general
14 consensus. If that's the case I am wondering
15 if we have a strategy on how to approach
16 figuring out the other ones or if it's
17 possible the points illustrated in numeral
18 one and two could be integrated in a more
19 romanette or more of a guardrail as opposed
20 to a statement.

21 Do you want to test that idea with

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1 the group? Is there any dissent from
2 romanette one and two?

3 Tony's proposal was to eliminate it?

4 So Audrey's suggestion is to see if
5 one and two are guardrails for people so we
6 can identify additional work. Any dissent
7 from inclusion of romanette one and two? So
8 the concerns then are with E paragraph one
9 and paragraph two and Arabic three. We have
10 outstanding Ron's proposed romanette 3.

11 Ms. Jackson: I am wondering if
12 people actually so Roman numeral two only
13 exist if one exists right? I am wondering
14 if we have issues with three and --no? I
15 guess my point is our main issue is number
16 one?

17 Ms. Podziba: Thank you, you looking
18 for a job?

19 She can handle it. What grade do you
20 teach?

21 Ms. Jackson: Fifth.

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1 Ms. Podziba: It looks like the
2 isolated piece for which we need to come back
3 is paragraph one, but if paragraph one is in
4 there we may have to come back to paragraph
5 two is that correct? All right.

6 We have to get greater direction on
7 what's helpful for us to work out to provide
8 as a next proposal so we can look at the
9 language of romanette three in the context of
10 the discussion. It would be helpful to get
11 greater clarity on Arabic one and what I mean
12 is this a blanket objection or is there a way
13 that folks are interest ed in changing that?
14 I just greater guidance on what we are
15 supposed to be thinking about.

16 Ms. Podziba: What are concerns about
17 paragraph E one for those of you who have
18 concerns?

19 Ms. Goss: I felt like it should be
20 in the guidelines rather than rule.

21 Ms. Podziba: But the substance of

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1 paragraph one is okay it's just a question of
2 where that is

3 Ms. Goss: No.

4 Mr. Evers: We are reiterating I
5 mentioned before the definition has changed
6 once again. And I think if I have my perfect
7 world we would keep those guardrails as I
8 mentioned and talk about paragraph one being
9 something like each state must adopt
10 guidelines for IEP to use in determining when
11 it would be appropriate for student
12 significant and cognitive disability
13 to -- blah, blah, Blah. Provide guidance
14 around that and if we want to put pressure on
15 those states that are bad actor ins this area
16 allegedly I think providing some specific
17 language in lieu of a definition that the
18 state guidelines to determine when ever to be
19 appropriate to have these students take an
20 alternative assessment that the guidelines
21 must be developed in your we have the guard

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1 rails over that. Without having a
2 definition. I think if we want to get to a
3 piece of common ground.

4 Mr. Wilbanks: My objection here is
5 really not I don't see a need for a
6 definition. Now, you want to work on some
7 guidelines and other things I just don't
8 think there's a big problem in this area. I
9 think it's being handled appropriately and if
10 not then you know somebody needs to deal with
11 it at the level of where the decisions are
12 made. I just think this would increase
13 number one the number of students that or
14 offer the alternate assessment and I'm all
15 for it if a student needs it but it should be
16 given the opportunity. I think it would
17 increase that number. I think the fact that
18 we spent three or four days and I know
19 everybody is really trying very hard to come
20 up with language that would be acceptable.

21 We vice president done that to this point. I

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1 know again I don't think we need a definition
2 and would be opposed to trying to find that.

3 Mr. Pohlman: I don't know if it
4 makes much sense after Alvin's comment. I
5 actually thought this was where Audrey was
6 going to say that it seems as if the NCLB FAQ
7 does provide text that may fit well in number
8 one. That if you start from replacing the
9 current number one with that text that we
10 have up here on the NCLB guidance language
11 and then we have some then we have some
12 agreement around romanette one and two in the
13 deletion of Arabic two because it is no
14 longer include ed in that definition. It
15 seems like that maybe a proposal to sort of
16 put up there and put out in the world. While
17 I understand this feeling that no definition
18 is needed in an effort to reach some
19 consensus. Does this established definition
20 already? This is what people are using and
21 if there's a strong will from some to have a

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1 definition than capitalizing on what exists
2 is a way to move consensus for it.

3 Ms. King: I had a question to Rich's
4 question and I'm just trying to get clarity
5 about what specifically is being asked of
6 those of us making a proposal around the
7 definition. I think I have sense under
8 romanette three I am not clear on romanette
9 one. What's the value of the NCLB language
10 over what is offered here in Arabic one?

11 Mr. Pohlman: I think it addresses
12 that additional definition may somehow
13 broaden or cause confusion in the field. I
14 think that if you have the same definition of
15 number one the Arabic one with the romanette
16 one and two providing additional sort of
17 clarification and potentially the romanette
18 three we will put that out there that provide
19 those additional guardrails, then I think it
20 begins to get to everyone's desired outcome
21 and so I am really just proposing this in a

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1 method to move toward consensus rather than I
2 am trying to propose something that meets a
3 lot of demands that I am hearing around the
4 table.

5 Ms. King: That's not a policy
6 question it's more of I'm not sure this is a
7 definition per se in practice. I think
8 Patrick is surprised by the language in the
9 case that I don't know that NCLB language, so
10 backing up a little bit this language we have
11 talked about extensively with our
12 constituency. It's easier for me to work
13 from there than to work from new language. I
14 am being honest about efficiency, and I have
15 gotten feedback and comments based on this
16 draft provided by Ed. If there's a policy
17 rational for why it's need to be changes. I
18 am open to swapping a word here or there. My
19 concern about strike and replace I don't
20 think it has the value that you see in terms
21 of being existing in place thing but I think

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1 it also comes at a cost. If there's a policy
2 or a verbiage situation that we can talk
3 about I am happy to talk about that.

4 Okay, so we are getting close to
5 lunch. Kay, I wanted to ask you a question
6 can you explain the difference between having
7 a definition versus not having a definition,
8 but having what's being referred to as
9 guardrails? What's the punch of a definition
10 that there seems to be some hesitancy
11 towards?

12 I guess what why we were in favor of
13 the definition is because we thought that the
14 language actually in E one provided some
15 pretty strong guidance around at least
16 characteristics of the kinds of kids that we
17 thought were appropriate for inclusion in
18 this group. And then the guardrails were
19 just that. I think we appreciate Tony's
20 concern that that language is to maybe too
21 broad. I think that's what Ron was trying to

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1 get at with romanette three was to kind of
2 put perimeters around the broadness. I think
3 really what we were trying to do is put in
4 regulations the to the extent that we could
5 summarize the definitions because so many
6 states are part of those two consortia that
7 we could provide sort of a common definition
8 that was consistent with what I think it's at
9 least 30 states maybe more are currently
10 using without being so prescriptive that it
11 sort of tied a state's hand from doing it's
12 own guidelines. So I mean I think we were
13 just trying to. I think we are also trying
14 to address the fact that currently we know
15 that there's I think 35 states that are
16 assessing more than one percent of the
17 students being assessed with an alternate
18 assessment. Clearly there's going to have to
19 be some redefinition of whom those kids are.
20 So we thought it would be helpful to put in
21 the definition or in the reg as definition.

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1 I don't know if we have necessarily looked at
2 just doing guardrails? I mean we could talk
3 about that to as an option. I think we were
4 really thinking that what was in E one was
5 important.

6 Ms. Podziba: I am going to take the
7 final comments and go to lunch. We will
8 consider that a change for Liz for Tony.

9 Ms. Jackson: This is just a
10 clarifying question because Liz I heard you
11 ask for clarification on what to redraft for
12 romanette three. You mentioned paragraph one
13 as well. I didn't hear the group actually
14 put that onus on you. I wanted to clarify
15 that. I wanted to throw out that if perhaps
16 this definition dozen belong in the
17 definition section here but just to be noted
18 within the assessment for four B if that
19 would somehow if the guardrails and along the
20 line of definition if it went to four B but
21 not as a definition but as clarification as

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1 to who those students would be.

2 Ms. George: Thank you. Just the
3 fact that Kay underscored the high number of
4 states that are assessing over the cap
5 because this one percent isn't statute. It's
6 important to have a definition. Clearly
7 there's some confusion about variation, a lot
8 of variation in the factors that states are
9 using. I just wanted to flag for a couple of
10 folk that is under scored the NCLB language.
11 At least my understanding is with what we
12 have quoted here. It emphasizes instruction.
13 It doesn't emphasize the substantial supports
14 as well that the students need and so that's
15 why I am not; I don't feel comfortable with
16 just leaving it at that.

17 Ms. Ricker: I will offer just a few
18 of my lingering concerns around Arabic one
19 especially. Actually for folks who need to
20 submit this sort of data or other people
21 responsible so if the state is responsible

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1 for keeping the number under one percent.
2 What is the chance that a definition actually
3 tips because now they have a definition to
4 use to identify students that it actually
5 tips it over one percent which leads to my
6 second lingering concern is this reminds me a
7 lot of the accountability error on teacher
8 where we were told what we had to do but then
9 we were scripted in the way that we did it
10 which actually in many respects from doing it
11 as well as we could for our students. If
12 states are told they must keep this number of
13 students under one percent I know we will
14 address the number differently. Shouldn't we
15 offer the state it is opportunity to get to
16 that goal with that flexibility? So I wanted
17 to just leave those as those two lingering
18 concerns I have around Arabic one.

19 Ms. King: I just had a question for
20 I realized we have table it had question of
21 whether the definition goes in but my concern

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1 is that if we are moving to language that we
2 are increasingly less comfortable with and
3 fundamentally there's a disagreement how does
4 that work? I am deeply deeply reluctant to
5 offer up language that we are less
6 comfortable with if at the end there isn't a
7 language fix to this problem?

8 Ms. Podziba: I think people are
9 trying to make an effort to reach consensus
10 on this. So I think what we are doing from a
11 process point of view is trying to develop
12 language that perhaps everyone can live with.
13 No one is comfortable with what's on the page
14 right now. If I just ask the question is
15 there dissent from this there will be
16 dissent. If there's dissent from not having
17 a definition then we are at an impasse. We
18 still have a day and a half. So with that in
19 mind I think for people for whom this is an
20 important issue to have a definition of some
21 sort that it's worthwhile to make every

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1 effort to come up with something that may
2 meet the concerns both of your constituencies
3 as well as the concerns others are raising.

4 Can we get a copy of that NCLB
5 language?

6 Sure we will have that when you get
7 bang from lunch or do you want it before so
8 you might do something with it?

9 Maybe we want to think about it so we
10 can go on another topic.

11 Ms. Podziba: It's a little bit after
12 one.

13 Mr. Rooney: Final housekeeping note
14 before lunch. For all the negotiators for
15 everyone in the room if you go down stair
16 there is' food trucks outside and there's Pot
17 Belly up the hill. If you go up the hill and
18 make a right then you walk a hung yards under
19 the pass there's a food court.

20 Ms. Podziba: The language that Lisa
21 quoted has been handed out. Before we move

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1 onto 4A I want to summarize what the
2 outstanding issues are on 4 A. Paragraph A
3 one romanette two just needs to be clarified
4 in the Department will do that B one has the
5 phrase -- I am going to go with what's
6 outstanding in 4 A before we move to 4 B is
7 everybody set? A one romanette two. Just
8 required clarification B one has the phrase
9 consistent with nationally recognized
10 accessibility standards and we have to
11 clarify that phrase. B 3 is also
12 clarification to turn that into an
13 affirmative statement. And then on E Arabic
14 Roman numerals one two and three are in play
15 but romanette one and two are acceptable.

16 Three?

17 Ms. Podziba: Did we do anything with
18 three?

19 Sorry, different one.

20 Ms. Podziba: We will come back to

21 those. We are going to start fresh now on 4

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1 B. Patrick I will let you walk us through
2 it. Okay so issue paper 4 B this is around
3 the state's criteria or the criteria is going
4 to exceed the cap on the kid who is can take
5 an alternate assessment. If you look at the
6 issue paper the actual beginning language for
7 the first page two and the first half of page
8 three we saw an issue paper 4 A, so the first
9 piece that will be specific just in the issue
10 paper is Arabic number three in page three.
11 There's a couple things I want to highlight
12 as we discussed last section under Arabic
13 number three romanette two we did make a
14 change that commas suggested about revising
15 this language about what the district should
16 submit if it's going to exceed one percent to
17 bring it more in mind with language in the
18 ESSA it's require that LEA submission
19 information justifying. Then we made a
20 similar change to romanette three. If you
21 are using the immersion you can't see this.

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1 There's a phrase in the middle that we struck
2 out of this section which was hold on I am
3 going to find it. I won't say it wrong.
4 Previously it said provide appropriate over
5 site as determined on the state under
6 paragraph C 3 romanette five of this section.
7 We cut that out to provide appropriate over
8 site of the state that's required to provide
9 information to the state. It's seen self-
10 evident that -- it seems unnecessary that to
11 repeat based on what it's doing. It seems to
12 be what the language is saying, so brevity
13 sake we delete that had piece of romanette 3.
14 Okay. Then we add new romanette four this is
15 what we discussed in the session two about
16 making information submitted by the district
17 under paragraph C 3 romanette two publicly
18 available provide that had such information
19 does not reveal personally identifiable
20 information about a individual student. We
21 put a place holder in the last session

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1 remember that we would be consistent with the
2 regulations this is the language in the
3 statute elsewhere we talked about ensuring
4 that personal identifiable information gets
5 released we added that's the language we used
6 here but we think that's consistent with
7 generally how we talked about being in
8 compliance with FERPA regulations. This is
9 information that's in the state would not
10 submit to the Department, the state would
11 make it available in some manner as
12 determined by the state. It's not defined
13 here in the regulation we are posing. The
14 justification for districts that exceed one
15 percent. I just want to then draw the
16 connection to part of the conversation we had
17 at the last session that districts in their
18 report card are already providing information
19 on how many kids are taking in general versus
20 alternate session. It will be on report
21 cards at the state and district level for

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1 school this is one would just be the
2 districts justification for exceeding one
3 percent. I am going to stop there to see if
4 people have questions before I move the
5 Arabic number four.

6 Questions?

7 Mr. Pohlman: In reading romanette
8 four I think the language is great. I am
9 wondering if information about an individual
10 student do you believe that's broad enough to
11 capture the scenario where there maybe two
12 students where I would say any individual
13 student to maybe account for a small incise
14 which may identify students inadvertently but
15 not particularized information as sort of a
16 nitpicky item. It's just struck me as
17 sufficiently broad to capture in size issues.

18 Mr. Rooney: I think we are open if
19 others want to have a discussion on that?

20 Ms. Podziba: Is it a proposal so
21 change and to any?

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1 Giving the statutory reason to
2 change --

3 Ms. Podziba: I had that feeling
4 also.

5 The statute does use the Language we
6 use about individuals. I always write in
7 singular. I can support this. I don't think
8 it in anyway means you look at each
9 individual student so you have multiple
10 students under an end size of ten you
11 couldn't reveal information about any of
12 them.

13 I think maybe as a note of
14 clarification for guidance you could explore
15 that as an item that just reminding states
16 that we should be still looking at those end
17 sizes as our states tend to push us further
18 and further down that end size.

19 Are there any other comments or
20 proposals for paragraphs two or three?

21 Mr. Hager: In the romanette two we

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1 are suggesting that it's not required but to
2 make it clear that the one percent isn't any
3 given subject to put in that phrase there to
4 assess students with any given subjects in an
5 alternate assessment.

6 Mr. Rooney: You add in any given
7 subject. It's sublet two-3 sublet two. It's
8 on page four of the red line. Page three of
9 the clean version.

10 Mr. Rooney: You are suggest anything
11 romanette two Judi do you mind if I capture
12 on the screen that you would say require that
13 LEA submit information justifying a need of
14 an LEA to assess more than one percent of
15 it's assessed if we add it in there?

16 Yeah.

17 Mr. Hager: It's clear that you can
18 go over. You look at each subject separately
19 that's what we are trying to clarify.

20 It's in the first romanette in a
21 given subject.

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1 Mr. Hager: In a given subject. In a
2 given -- keep it simple.

3 Mr. Chau: I think to match what it
4 says in two it should probably meet not in
5 any given subjects or any assessed subject
6 area. In number two for each subject which
7 tests are assessed. I think it would be
8 assessed not just a given subject.

9 Ms. King: I think Derrick the
10 distinction there is if there's the one
11 percent cap applies to everyone who's
12 assessed in math and to everyone who is
13 assessed in LEA and to everyone assessed
14 in -- I think that's I don't really care
15 about the wording the point is to get to
16 that. If you mean math or science or LEA?

17 Ms. Podziba: With friendly
18 amendments I think it's an assessed subject.

19 Mr. Chau: We don't want it to
20 include other subjects. If it read a given,
21 any given subject that would imply any.

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1 Ms. Podziba: Any discussion or any
2 dissent? Are there any other items on
3 paragraph two or three? Okay. Is there any
4 dissent from adopting tentative agreements on
5 paragraphs two and three? Okay. Patrick we
6 are ready for four.

7 Mr. Rooney: Number four this is
8 about the criteria for a state that intends
9 to request a waiver to exceed one percent of
10 students assessed in an alternate assessment.
11 It's spent a lot of time talking about this.
12 We made changes based on that conversation,
13 but I wanted to run through for you so we
14 understand how we try to capture the
15 conversation in the last session. 4
16 romanette I state it is same it should be
17 submitted at least 90 days prior to the start
18 of the state's first testing window.
19 Romanette two we spent a bit of time talking
20 about the aspect of the state's request.

21 It's been changed now to provide state level

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1 data from the current or previous school year
2 so providing the state that is option on
3 which school year they would like to use as
4 their base for providing this data, but the
5 data itself has changed to what's here on the
6 top of page four A and B. A is the number in
7 percentage of student ins each subgroup of
8 student defined in A B and C, A is ethnic
9 groups, B is economically disadvantages D is
10 status as an English learner or not. The one
11 missing is C students with disability. It
12 didn't make sense to include that group. So
13 providing subgroup information at the state
14 level with these subgroups we took the
15 alternate assessment so remember the last
16 time this letter was talking a lot about the
17 disproportionality data and now we reframed
18 it as provide us your state level data by
19 subgroup of how many kids took the alternate
20 assessment. Then B has not changed although
21 we did clarify that we mean it should be show

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1 us that you assessed 95% of all students and
2 95% of students with disability subgroup for
3 the -- and provides assessments. Romanette 3
4 is then where the state would provide
5 assurances from each of its district. Again
6 this language we talked a little bit about
7 last time is focused on any district that
8 exceeded one percent and then any other
9 district that the state determined will
10 significantly contribute to the one percent
11 cap. There's three assurances they should
12 provide for these district that is the state
13 identifies. The first is that the state has
14 followed the guidelines in paragraph D and
15 those are the guidelines we talked about in
16 the last issue paper around if they have
17 adopted alternate achievement standard that
18 is' what D is. And capitol B is that the
19 state the district will not have tested mark
20 and the previous year unless they can
21 demonstrate that they have more such student

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1 that need an alternate assessment. C we have
2 apprised C in line with our provision above.
3 It should provide an assurance that it's not
4 disproportionately -- I think we realize that
5 would be maybe a hard bar for the districts
6 to assure that they are doing that but we
7 made this revised to say they addressed any
8 disproportionately in the number of students
9 in any particular subgroup in following the
10 same subgroups as above an taking an
11 alternate assessment. I think that gets to
12 some of the conversation we had about whether
13 it's disproportionally that states an
14 districts should be thinking about planning
15 and time lines to help improve things over
16 time. I think we try to cap cure that here
17 in this assurance C. Romanette four is about
18 the state write ago plan an a time line and
19 these A and B are the same so this is a plan
20 and a time line for how we are going to
21 improve implementation of their guidelines

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1 under D because it's the same reference.
2 Then B is that they will take steps to PO
3 vied support to LEA's that exceeded one
4 percent. And then capitol C on page five
5 again, we have slowly revised this version to
6 try to be consistent with the versions we
7 made in the previous statements. The number
8 of percentage of students taking an alternate
9 assessment through the data provided under
10 romanette two we added a fifth romanette of
11 this section. In light of the conversation
12 we had in session two it occurred to us that
13 there's there maybe another step that we
14 would make sense to ask states to follow if
15 they are going to come in and ask for an
16 additional waiver so that the way we wrote
17 this proposal would be that it would be a one
18 year approval that we would provide for a
19 state. There may be the case that states
20 will need more than one whether to make
21 changes to their plans and time line

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1 implementation in order to come under one
2 percent in that case they would have to come
3 in with another request the following year.
4 There's nothing how they demonstrate the
5 progress and time line they have given us.
6 If they are going to come in for a subsequent
7 waiver in addition to meeting the previous
8 one, two, three and four the romanettes on
9 pages three and top of five they will have to
10 demonstrate progress they made on the plans
11 they gave us the previous years under
12 romanette four. That would be an additional
13 criteria they would have to write toward when
14 they request a waiver.

15 Ms. Podziba: Thank you. We will
16 open up discussion of paragraph four which
17 starts at the bottom of page three and
18 extends to the balance of page five.

19 Ms. King: I have pretty serious
20 concerns with getting rid of the precondition
21 they not be disproportionately. I understand

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1 the value of data and plan of addressing
2 disproportionately. I would like to hear more
3 about why the decision was to remove that
4 criteria. It's just I am deeply
5 uncomfortable with that deliverable.

6 Mr. Rooney: So I think as we were in
7 this discussion two weeks ago or in session
8 two and then as we were thinking about this
9 last week identified what to discuss to
10 propose for all of us today. The different
11 between what's here under A and the plan in
12 time line under romanette four seemed
13 inconsistent. Where under A we said show us
14 the disproportionately and romanette four show
15 us your time line how you are going to
16 address disproportionately. It felt
17 disconnected. It seems there maybe I think
18 on the scale of which to kind of focus on it
19 seemed to make more sense to ask states to
20 have a plan in time line for how they are
21 going to address this area may exist and hold

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1 them to those changes they are trying to make
2 to address those issues that you know maybe
3 ongoing for whatever reason to try to improve
4 the thing ins their state.

5 I agree I saw the inconsistency
6 before and I would have made the other switch
7 the other way I would have made it a
8 precondition. I understand that you can't
9 have a precondition for something that didn't
10 exist or you wouldn't have gotten a waiver.

11 It seems to me that you could have
12 significant disproportionately and make
13 miniscule progress in addressing that
14 disproportionately and that could be the
15 result of deep structural through tout state.

16 I just you know the idea here is that these
17 waivers should be granted when there is an
18 anomaly which is not evidence of structural
19 an equality. It seems to me that
20 disproportionately is even more so then simply
21 exceeding more than one half structural

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1 equality. You know I don't know if it's
2 helpful. I would propose that I would
3 replace the language or so I am feeling
4 unpersuaded Patrick. Is it helpful for me to
5 propose for putting that language back in or
6 talk about that or what's helpful.

7 Ms. Podziba: The more concrete we
8 can be the better the discussion we can have
9 among the negotiators.

10 Ms. King: I would suggest that --

11 Ms. Podziba: You are moving us to
12 the version of four B that has the strikeouts
13 in it?

14 Yeah, but I am going to I will just
15 read the language from last time, but it's
16 corresponding to where the red line is. So
17 it says the state did not disproportionately
18 assess students in any subgroup of students
19 with the alternate assessment align W-D
20 alternate academic achievement standards in
21 the prior school year as -- using the

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1 subgroups to defined in section 11 CB A and D
2 of the act so that goes I would go above the
3 new A which is it would go on page four at
4 the very top. Or maybe I know right it would
5 just replace the A than reporting the
6 percentage reporting the disaggregated
7 participation rate that you would instead
8 report that you did not have the
9 disproportionally.

10 Ms. Podziba: I will open the floor
11 for discussion. I know Mary Cathryn you have
12 another item the proposal is to move back to
13 the language that had been in the version we
14 looked at the last meeting.

15 Mr. Evers: I changed my tune. The
16 reason we proposed this last time was because
17 it almost automatically precluded one from a
18 prior year and having prior year issues to be
19 considered for a waiver. I would not support
20 this change back to what it was. Frankly you
21 know you look at the reg here it's all

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1 administrative rules for the Department of
2 public construction to follow and of all the
3 issue papers here I would say this one is
4 highly regulated. We have another five here
5 at the end. So I think we probably got
6 enough

7 Ms. George: I just want to echo
8 Liz's concern. Significant
9 disproportionalities are a huge issue
10 particularly one that LDF the legal defense
11 fund has worked on. I think this is probably
12 one of the most significant provisions in
13 this law. It's consistent with the equality
14 and the person of equity and access under SF.
15 I think actually those states that have had
16 disproportionately in the past are the ones
17 that should not get this waiver is an
18 exception to the law to exceed the cap. So
19 those are the very ones who need to take
20 corrective action to address that
21 disproportionately so again I really think I

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1 feel strongly that we should have this
2 language included and that those states maybe
3 in later year ifs they are able to correct
4 their action or second year they are fine
5 then you could qualify. It's really the
6 whole purpose of this is this is an exception
7 to the law and so you have to show compliance
8 through not having disproportionately that's
9 why this provision is in the law.

10 Ms. Podziba: Further discussion of
11 this proposal?

12 Ms. Briggs: More of a question how
13 it works. I'm a state and this is obviously
14 the new structure because previously there
15 wasn't one participating in the alternate.
16 So state X has had two percent I am making up
17 this number and now they can't appropriately,
18 the one percent cap is good. How does this
19 all how does this work?

20 Mr. Rooney: How do you mean?

21 Ms. Briggs: So if I'm a state and I

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1 have been testing two percent of the students
2 because that's been allowed under the
3 previous structure and maybe in any given
4 year I can't get from two to one so just is
5 there a transition year and is there some
6 recognition that these are like individual
7 student decision that is are taking place in
8 IEP teams just like talking about a lot of
9 kids. I guess those teams meet every year
10 anyway. Just trying to think through some of
11 that and thinking about Tony's issue and
12 Janel like how is it going to work?

13 Mr. Rooney: That's fair. I don't
14 know if I have a good answer to that
15 question. The law didn't anticipate that
16 there would be transition once the law goes
17 into effect. It's as when the law goes into
18 effect it's going to assess more than one
19 percent. It's going to request an option for
20 the states to produce a waiver. I think only
21 this rich asked me during the break when this

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1 goes into effect the one percent cap gets
2 applied in 17-18 school year. The
3 assessments since almost every state tests in
4 the spring. It's the assessments that are
5 given in 18. That provides some leeway for
6 states to identify their guidelines to
7 provide supports to districts to IEP team
8 that is make these decisions I think that's
9 partly why to think this is important. We
10 got shrunk criteria and then we need
11 clear -- if you need to exceed one percent at
12 the state level what is required to
13 demonstrate that this is reasonable and
14 acceptable and that it should be to Janel's
15 other points that limited waiver that most
16 states should be able to get under one
17 percent. I think that the reason that we
18 suggest changing from showing that there be
19 no disproportionality under A to the language
20 to show the number and percentage to make it
21 a criteria not but not necessarily a barrier.

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1 We want to make sure states are addressing
2 that which is why we ask for the data and we
3 ask for the time and time line. That seemed
4 more consistent to have those two pieces
5 together and make it an important area where
6 evaluating the state's proposal. That's what
7 we were partly thinking.

8 Mr. Hager: Actually a couple other
9 qualifiers. The disproportionally is a very
10 limited disproportionally. It's not
11 disproportionally of suspensions and
12 classification. It's disproportionality of
13 taking the assessment that's why Liz is
14 talking about a structural problem as far as
15 I understand statistically there should be no
16 differences in terms of who should be
17 qualifying based on race or ethnicity or
18 socioeconomic status so that should not be
19 heavy. I think that's why we like the
20 original language this is something that
21 should not be happening. It's a very narrow

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1 group of students and by definition we should
2 haven't the disproportionally. Okay. Is
3 there any dissent from adopting this
4 proposal?

5 Ms. Podziba: Liz's proposal, which
6 brings back language from a prior draft. Any
7 dissent on this proposal? Tony, all right.

8 Ms. Ricker: All right. In the
9 interest of being really concrete so we can
10 discuss something instead of asking a
11 question on the top of page four capitol
12 letter B I would move to strike the state has
13 measure it had achievement to at least 95% of
14 all students and 95% of students in the
15 children with disabilities subgroup under
16 sections 111 C 2 C of the act who are
17 enroll ed in grades for which the assessment
18 is required under 200.5 A.

19 Tell us why?

20 Ms. Ricker: If the waiver should be
21 about addressing the one percent. It should

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1 not be about addressing the total number of
2 children who are taking the state mandated
3 tests.

4 Ms. Podziba: Propose strike
5 paragraph five B. Just the paragraph B?

6 Ms. Jackson: Just to clarifying
7 question is the 95% in there so that it's
8 more that the one percent is proportionately
9 accurate or reasonably so for example if I am
10 a state and only 50% of the mainstream kids
11 agree to take the test an you calculate one
12 percent on that it's not actually one percent
13 do you know what I am saying. Is that why
14 the 95% is in there?

15 Mr. Rooney: From our perspective
16 making sure your assessment system is
17 including all students in the assessment is a
18 fundamental components of the assessment
19 system and if you are not meeting that
20 minimal requirement for both overall across
21 all students across the state and

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1 particularly with kids for disabilities of
2 which this is a subset taking the alternate
3 assessment. That does seem like a
4 fundamental concern that we would be
5 uncomfortable deleting.

6 Ms. Jackson: Let me clarify this is
7 95% of students in the subgroup with
8 disabilities right?

9 It east both. 95% of all children to
10 95% of children with disabilities. There's
11 two measures they have to meet in order to be
12 eligible rat the state level.

13 Ms. King: So I think some this is I
14 think is super important especially because
15 the creation of the 95% participation
16 requirement in NCLB was directly in responses
17 to the widespread exclusion of children with
18 disabilities from the assessment systems
19 prior to NCLB. This was a very important
20 edition to NCLB that was specifically about
21 children with disabilities an English

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1 learners but because this participation rate
2 has historically been an important tool for
3 ensuring the inclusion of students with
4 disabilities. It's appropriate to make it a
5 part of this system and if this waiver is
6 about ensuring that although you have exceed
7 it had one percent cap that is not a result
8 that is not due to your exclusion of students
9 with disabilities with accommodations or
10 however not meeting the needs of children
11 with disabilities. It's really important to
12 include this given the history and the
13 pattern of excluding children with
14 disabilities from the assessment system.

15 Ms. Ricker: I would start by
16 addressing if you want to have a testing
17 system with integrity you have a testing
18 system that is where the tests are relevant
19 and where there are meaningful and there are
20 meaningful measures. When that happens you
21 are not going to have a problem with

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1 achieving 95% but you don't hold the waiver
2 hostage until that fact.

3 Mr. Rooney: This is about a waiver
4 and an exception for states to exceed one
5 percent and I think I understand your point
6 Mary Cathryn to make sure states have good
7 assessments that's our hope and expectation
8 to make sure states do that. And I think
9 this components is an important measure to
10 make sure that the state is including all
11 students in its assessment system. If it
12 can't meet that basic expectation then it
13 seems that we shouldn't entertain giving them
14 a waiver of the one percent criteria. I
15 think we would dissent on it.

16 Ms. Podziba: Richard on this point
17 it sounds like we have dissent on this
18 proposal?

19 Mr. Pohlman: I am wondering if
20 there's a way similar to address the
21 disproportionality questions after the first

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1 session to -- I completely support it from
2 the outside like this being in here
3 somewhere. I don't think striking it is the
4 way to go for all the reasons Liz said. I
5 wonder if there's a way to insert enough
6 flexibility where the Department is -- it's
7 not a prohibition for applying for a waiver
8 simply because you didn't meet the 95%. They
9 would weigh that heavily in your decision-
10 making. I think you can make that clear
11 through your guidance. We tend to pay a lot
12 of attention to that. There's a way for you
13 to exercise the mechanism without it being an
14 outright prohibition. I think it's good to
15 explore.

16 Ms. Goss: My question is the 95%.
17 What happens if you are not able to do the
18 95% due to the people opting out or you know
19 something that is are just totally out of
20 your control?

21 Mr. Rooney: If the state has not

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1 assessed 95% of its student then it will not
2 be eligible for the one percent waiver.

3 Ms. Podziba: I understand they were
4 dissenting from the proposal. I think we
5 will move onto the new item. Are there other
6 items or concerns or proposals on this
7 section?

8 Mr. Hager: Under romanette three A
9 you had that they filed each of the
10 guidelines under paragraph D except these
11 six. That's the UDL provision if it is I was
12 wondering why you accepted that one of all
13 the ones in D. It would seem UDL would be a
14 critical part of this process?

15 Mr. Rooney: Give me a second. It's
16 200.6 D 6? Okay. I think our reason for
17 excluding D 6 is that this is about the LEA
18 so this whole we are at this reference for D
19 6 comes from is around the district
20 assurances around D. D 6 is about the state
21 describing in a state plan how it's

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1 incorporating the principles OF UDL. It
2 didn't seem appropriate to ask districts to
3 follow the principles of UDL. It's about the
4 state requirement in D 6 that's why it's
5 accepted.

6 Okay thank you.

7 Ms. Podziba: Aqueelha?

8 Ms. James: I'm not sure if we could
9 go back to B. The reason that is we spent a
10 lot of time tweaking vocabulary. Is the
11 Department saying they are not open to
12 tweaking the vocabulary or language for 95%?

13 Mr. Rooney: If people want to
14 promote rich was offering we could try
15 something. We listened to conversations on
16 what you might propose around B I don't know
17 what you might propose. We don't have a
18 proposal for something other than the
19 language that is there.

20 Ms. James: I am genuinely concerned
21 that parents do have the right to opt out

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1 which causes schools to maybe not reach that
2 95% which ultimately causes a district and to
3 even possibly a state especially a district
4 that is both state and district. I don't
5 know how we can speak to that? I don't have
6 the language.

7 Mr. Chau: I have a different topic.

8 Ms. Podziba: Janel?

9 Ms. George: It's not in the statute
10 it's in the statute I guess I am trying to
11 understand how we can go back on that?

12 Ms. Ricker: I feel it at least
13 depleting the two.

14 Mr. Hager: I was going to reiterate
15 what Janel said it's not only in ISSA it's in
16 NCLB it's an obligation since the beginning.
17 So you know this is something that shouldn't
18 be a problem in 2016 unfortunately it is.
19 And again I am assuming I don't know what are
20 the other consequences not outside of the
21 waiver the state is not assessing 95% of it's

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1 students and I'm assuming there's other
2 consequences elsewhere in ESSA as well not
3 just this waiver.

4 Mr. Rooney: Okay. I want to clarify
5 that what we are talking about right now is
6 the requirements for states that we are going
7 to request to exceed one percent. There is
8 not in this section of the ESSA about
9 anything that students assess 95% or the
10 state that assesses 95% of the students in
11 the school or children with disabilities
12 subgroup. The law does say and in the ESSA
13 that the assessment system that the state is
14 developing needs to include all students in
15 the assessments. There's no wiggle room at
16 that point. It should include all students.
17 On the accountability side which we are not
18 talking about today they are there and it's
19 not the subject of negotiations there is an
20 expectation or a requirement that states
21 include participation rate in their

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1 accountability system and there is some
2 language has changed between no child left
3 behind and the every student succeeds act in
4 terms of how the participation rates in the
5 accountability system. I don't want us to
6 get mixed up between those two things it's a
7 fundamental requirement of the state that is
8 their assessment systems include all student
9 that is we felt that it was important to make
10 sure if states are asking for this waiver
11 they are asking for special consideration
12 that they are assessing all students.

13 Ms. Podziba: I am going to take
14 proposals here because we are getting far
15 flung, so Patrick I heard you say that this
16 is important to the Department and I also
17 heard you say that the door was open if I
18 heard you correctly for proposals about that.
19 So if people have proposals let's entertain
20 those. Richard?

21 Mr. Pohlman: I would like to propose

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1 that in B it read the state must demonstrate
2 it has made sufficient efforts to ensure it
3 and then has measure it had achievement so
4 that there's an inserting of a clause between
5 statement has that reads must demonstrate as
6 made sufficient efforts to ensure it?

7 Ms. Podziba: Response to that
8 proposal?

9 Ms. Pin Ahrens: I would have to
10 disagree with your proposal Richard because
11 this is part of statute for the 95%
12 participation rate. I want to point out that
13 there's only two states right now currently
14 in danger of not meeting that requirement for
15 that one percent exception New York and I
16 believe Oregon. This really I don't think
17 this is a huge problem right now. I also
18 think as a parent if I know that my state is
19 not meeting the basic requirements of the law
20 in terms of making sure that all students are
21 being assessed at the necessary participation

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1 rate I don't want my state having an
2 exception you know to this particular one
3 percent rule.

4 Ms. Podziba: I heard some dissent on
5 Richard's proposal. Is there dissent from
6 this proposal, yes? Okay other proposals on
7 this paragraph D Lynn did you have a
8 proposal?

9 Ms. Goss: That we just need to
10 clarify that it's the state that decides the
11 impact of missing the 95% it's not it's
12 already in the statute it's somewhere else
13 for the 95% and that we need to not have it
14 be it's not a precursor for the waiver.

15 Ms. Podziba: Are you asking Patrick
16 to clarify that that's what this says?

17 Yes.

18 Mr. Rooney: I didn't follow your
19 question sorry.

20 Ms. Goss: The 95% is already in
21 statute so where does it become a precursor

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1 to getting the one percent waiver and it
2 should not be an automatic. It should be a
3 state decision.

4 Mr. Rooney: Which should be a
5 state's decision? Again, 95% that is part of
6 how the state incorporates it is
7 participation rate in its accountability
8 system. It's not part of what we are
9 discussing here today. The requirement under
10 the state or assessment systems they include
11 all students in their assessment. We have
12 added this components under B that we are
13 looking at which says that in order to get
14 the one percent waiver and all of this is not
15 in the ESSA. The ESSA says the states have
16 the request a waiver. It calls it out when
17 one percent of kids take the assessment. We
18 are trying to clarify what are the
19 expectation that is are states that are going
20 to come in and ask for this waiver than what
21 they have to do to ask for it. Where we want

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1 to add in this piece we think it's important
2 to include all the students.

3 Ms. Goss: We don't believe that's
4 the intent of the law that it should be a
5 precursor forgetting the waiver for the one
6 percent.

7 Mr. Rooney: I think the Department
8 feels this is a fundamental component that
9 you include all students. This is about not
10 just include all students in the assessments
11 because this is about a subset of students
12 with disabilities that take the alternate
13 assessment they should demonstrate they are
14 including all the students with disabilities
15 in the assessment system.

16 Ms. Podziba: Okay. We are going to
17 I don't have any additional proposals on the
18 table for this so we are going to go to is
19 yours on this?

20 Ms. Jackson: I have a question so I
21 think this is a validity test for one

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1 percent. You have to already be
2 disproportionately not assessing. I am
3 wondering for those that are against this if
4 you could explain to me how kids lose or kids
5 are harmed by this being included? I am not
6 saying that in an aggressive way I don't
7 think so. I am curious what the concern is?

8 Ms. Goss: I was talking to Marcus so
9 I missed your question.

10 Ms. Jackson: To ground it back to
11 kids taking assessments and kids being over
12 referred to all assessments. I am wondering
13 how will children be harmed by B being there?
14 My clarification is that I'm not telling you
15 I think you are advocating for that I am
16 wondering what is the harm in having this for
17 the children?

18 Ms. Goss: It gives us artificial
19 caps and moves us away if a student center
20 decision.

21 Ms. Podziba: I hope that answers you

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1 somewhat? Is there I don't have any proposal
2 on the table right now so I am going to go to
3 Derrick for a new item. Switching gears for
4 a little bit on the bottom of page three. It
5 talks about being submitted at least 90 days
6 prior to the state's first testing window.
7 Operationally I am wondering what that means.
8 In California there isn't actually a state
9 testing window it's actually a percentage of
10 the school year and then individuals schools
11 to determine their own testing windows and
12 each school has their own and the district
13 has their own calendar. I am operationally
14 wondering what the expectation is and I can
15 understand the rational to 90 days prior. I
16 am assuming that schools put in their orders
17 for the assessments so they can possibly
18 anticipate when schools are requesting more
19 than one percent of the alternate
20 assessments. Again, that's I mean I'm just
21 sort of wondering operationally because at

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1 the end of the day this is going to have to
2 operationalize from people at the state
3 level. I don't know if something like this
4 was taken from another statute and this was
5 regular language. I don't know?

6 Mr. Rooney: I'm happy to answer
7 that. This is not taken from other language.
8 We talked about this last time the new
9 requirements they may not assess more than
10 one percent on an alternate assessments.
11 It's tricky in time wise for states to
12 request this waiver. We tried to balance
13 that need for states to ask for the waiver
14 before the assessment is given because
15 generally speaking we don't we try not to do
16 waivers after the fact we try to do waivers
17 before so their prospective not
18 retrospective, but the timing here is hard
19 and that states will take them sometimes to
20 identify that they will need the waiver. By
21 putting 90 days here as the time line that

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1 was our attempt to thread that expectation
2 which will give states time to identify if
3 they need the waiver or not. It will give us
4 time hopefully to get the waiver a review and
5 act on it to decide whether or not to approve
6 it or not. That's the first part of your
7 question it's about the first testing window
8 there's no exact science to this and I think
9 California is probably different than most
10 states. Most states generally say our
11 testing window starts from March 4th through
12 April 30's or whatever the time is and
13 schools treat their individual testing
14 windows within that time frame. I know when
15 they moved to computer adapted tests they are
16 moving away. I think we are open to
17 suggestions we are not sold on the first
18 testing window. I think before the testing
19 window opens in the state the state should
20 back that up 90 day ins order to figure out
21 that they need the waiver an then come in and

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1 ask for it. That's our thinking. If you got
2 a better suggestion on thousand deal with
3 that language. The other thing we can deal
4 with that through the preamble to explain
5 that language that we can't figure out
6 something that would be more prescriptive
7 than

8 Mr. Chau: I don't have a proposal
9 but I'm asking for clarification, but it
10 would be beneficial to maybe think of
11 something a little bit clearer. I can sit
12 down and think about it and talk with some of
13 our state folks about what that would look
14 like also. I wouldn't want something to get
15 in the regulation that is we can't meet. I
16 want to recognize that if we are asking for
17 this beforehand there's also the reality of
18 even though schools may order the assessments
19 they might not administer the assessments
20 because often time schools request the
21 assessments an don't administer them. I want

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1 to flag that we don't want to put something
2 in regulation to ask states to do something
3 that they don't need to do when they realize
4 after the fact they didn't administer all of
5 these assessments and we didn't need to go
6 through all of this business and writing we
7 were trying to save you some work.
8 Operationally I am trying to think how this
9 would play out in your world.

10 I understand you are asking for a
11 hold on 4?

12 Yep.

13 Ms. Podziba: Any other additional
14 proposals or discussion on paragraph 4? Okay
15 so we have a hold on four romanette one apart
16 from that is there any dissent from adopting
17 tentative agreement on section 4.

18 Mr. Hager: I thought there was a
19 concern about 4 romanette two A and B? If
20 I'm not mistaken?

21 Ms. Podziba: If you dissent because

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1 people raise issues and then they are not
2 deal breaker issues, so if you dissent Ron
3 tell us that you dissent and tell us why?
4 Please help me out and don't dissent on
5 behalf of somebody else.

6 Mr. Hager: It's B romanette two A I
7 think Liz we had made a proposal which I
8 fully support to go back to the original
9 language. As far as I know that was either I
10 think that was rejected.

11 It was rejected.

12 Mr. Hager: We want to maintain our
13 request that we go back to the original
14 language.

15 Ms. Podziba: So the proposal that
16 was dissent ton proposal so you bring back
17 another proposal? You can dissent and we can
18 hold off on it.

19 Mr. Hager: We want to hold on that
20 that's what I'm trying to say in a roundabout
21 bizarre way.

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1 Ms. Podziba: I want to be able to
2 note it so it's four romanette two A. We
3 have apart from four romanette one and four
4 romanette two paragraph A is there any other
5 dissent on any other parts of that?

6 Ms. Goss: Paragraph B as well for
7 the 95% of all students.

8 Okay. So essentially we have a hold
9 on romanette one and dissent on romanette two
10 both A and B. Okay. If you dissented I am
11 going to expect you to come with alternatives
12 to put before the committee. I think that
13 means we will move away from four B I am
14 expecting people don't have proposals right
15 now is that right? Okay. So let's set that
16 one aside. We will go to issue paper three.

17 Mr. Rooney: Issue paper is locally
18 selected, nationally recognized assessments.
19 We spent a bunch of time talking about in the
20 last session we made a couple final tweaks
21 otherwise this issue paper should look

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1 similar to what we discussed in the last
2 session. I will point out the changes we
3 made and then we will talk about where we
4 could make changes. I think in the last
5 session Rick had asked for a couple changes
6 to address charter schools that is within an
7 LEA and charter schools that are asking to do
8 this. In the discussion issue paper two in
9 session two we had made the changes under the
10 in general section under A on the bottom of
11 page two and the top of page three. I think
12 after going back to looking at how these
13 pieces fit together it made sense actually to
14 move those suggestions under the LEA
15 application which is on page four. It's
16 grayed out text. We grayed it out because we
17 didn't make any substantive changes to the
18 language we just reworded it. I do want to
19 point out it's changed. Before an LEA
20 applies they need to notify all parent that
21 is the LEA tends to request approval and how

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1 they can provide input and the effect they
2 have and then if you look in the middle of
3 page four and provide a meaningful
4 transportation where students are include ed
5 in such assessments that's if the charter
6 school is part of the LEA asking for this.
7 And then under number two romanette two sorry
8 I'm looking we aren't as part of that the
9 reason why number two or romanette one is
10 underlying we move them down into this
11 section. It's all about the LEA application.
12 It must update its plan to update for the
13 change. Romanette two which is at the bottom
14 the last red paragraph. If the LEA is the
15 chart school that the use of the
16 assessment -- consulted with the authorized
17 chartering agency. That's the language we
18 had general agreement in session two we have
19 move that had from the A in general section
20 to C under the LEA application. I wanted to
21 walk us through why that's different. All of

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1 this is how the LEA applies for the request
2 to the state. It seems consistent to put it
3 there. One is the top of page three. The
4 LEA must administer the same locally selected
5 nationally recognized high school assessment
6 that language is not you have the intent is
7 that you are setting the same tests you have
8 comparable information in both districts both
9 of those things are being safeguarded earlier
10 with that components. The second piece is on
11 page five with definition sorry I will back
12 up one second. The number five right above
13 the definition where we talk about notices to
14 parents. All the notices to parent ins this
15 section have to be consistent with 200-point
16 E again is the same reference that we talked
17 about first thing this morning D the
18 definition for the nationally recognized
19 assessment is the same definition that we
20 talked about that we brought into session
21 two. We have changed it slightly last time

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1 we talked about there being an assessment of
2 students, knowledge and skill that is
3 administer in multiple states an used by
4 institutes of higher education. We changed
5 use to accepted by institution of higher
6 education. We added in those are other
7 states. To provide additional flexibility
8 and then we consolidated the second half of
9 the definition. Where before we had if for
10 the purpose of entrance and the in the we
11 combine that together and hopefully it's more
12 streamlined in placement of the courses in
13 post-secondary or training programs. It's a
14 slight consolidation of that definition.
15 We -- we didn't make substantive changes in
16 this definition. We think a nationally
17 recognized assessments has a particular
18 connotation, which is beyond just a test
19 administered in multiple states. There is an
20 additional expectation for a nationally
21 recognized test. We think it's helpful to

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1 clarify in the regulations its clear
2 information to the field -- with that I will
3 open it up for discussion.

4 Ms. Podziba: Why don't we take
5 discussion first on essentially pages two and
6 three not including romanette one at the
7 bottom. Richard?

8 Mr. Pohlman: This is likely self-
9 explanatory. I am wondering within the
10 requirement for the LEA to administer I can
11 make the assessment should there be a note
12 exempting or with the exception of those
13 students tested ton alternate assessments
14 with the statutory reference there? I am not
15 sure that was the intent but if we are saying
16 all students we actually have other
17 regulations.

18 I think that would be a good
19 clarification. We might need to work on the
20 language on how to put the exception in there
21 unless Judi can think of one?

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1 Ms. Podziba: Proposal as written by
2 Judi. Any discussion of that proposal? Any
3 dissent? Anybody want a clarification
4 question first?

5 Ms. King: I don't know if it's
6 necessary but in this context we mean those
7 children will be assessed in the statewide
8 alternate assessment. Do we need a cross
9 reference that will make clear that it is
10 that, all students in the state are taking
11 the same alternate assessment even if in that
12 LEA the high schools are taking alternate?

13 Mr. Rooney: We can make it
14 consistent with 200.6 C that's where they
15 adopt alternate standards.

16 Ms. Podziba: Further discussion of
17 this proposal?

18 Mr. Chau: I think LARA and I will
19 have the same issue, but it will be good to
20 hear from both of our perspectives. I want
21 to reiterate again this requirement that all

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1 high school students take it across the
2 district. Means it's different things for
3 different districts. It's a different
4 experience implementing in district like ours
5 and they are unified where we have over 120
6 high schools. And by having a blanket
7 requirements that the same assessment has to
8 be given across the district means very
9 different things across different districts,
10 so I just want you, it's not a deal breaker
11 for me. We talked it over and we give the P
12 SAT to all of our students right now. In
13 practice what this regulation will make us do
14 is to double test students. When we
15 implement this if we as a district were
16 thinking about moving over to a different
17 assessment. We end up and we have school
18 that is can probably start administering
19 those assessments this year. We have other
20 that is are probably not and so what would it
21 would probably happen what would likely

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1 happen is we would keep on giving our state
2 assessment the balance assessments to all of
3 our high schools. We would start rolling out
4 this other assessments so that those students
5 will be asked to test twice until such time
6 we are able to roll it out to our schools
7 that's just practically speaking the way we
8 would probably roll it out. I want to put
9 that out there and recognize that. I heard
10 from some other groups from our previous
11 conversations and it seems like this is a
12 deal breaker for most. I want to share the
13 reality of the situation that this will
14 result in double testing students.

15 Ms. Evangelista: I was wondering if
16 we should do the definition first for me it
17 would maybe help inform us on this discussion
18 better when we talk about what does this mean
19 in the nationally recognized assessment.
20 Just to add what Derrick said that is what
21 will happen. I think at the last session you

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1 even said well New York won't choose an
2 assessment like that. The districts around
3 us the West Chesters and the NASA county it
4 is rich districts will be able to move to
5 those assessments very quickly and not have
6 to double test those students whereas our
7 students will have to be subjected to that
8 just because of the size of our district. So
9 I just think that's something to consider. I
10 also wanted to see if we should discuss what
11 the definition of it is first before we
12 talked about these other things.

13 Ms. Podziba: How do you feel about
14 moving to the definition first?

15 Mr. Rooney: Sure.

16 Ms. Pompa: I can hold the question.
17 I was going to talk about the preamble. I am
18 still concerned about messaging
19 accommodations within the section. It does
20 refer to 200.2 to 200.5 to 200.6. I would
21 still want language in the preamble that

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1 makes it very very clear that accommodations
2 need to be in place for any of these
3 nationally recognized assessments for
4 students with disabilities an English
5 language learners.

6 We are going to take Lara's
7 suggestion and move to page five the
8 definition and then we will come back to
9 these other questions. I am opening the
10 floor for a discussion of the definition.

11 Ms. Pin Ahrens: On the definition I
12 am wondering why I think I made a comment at
13 the last session for adding in international
14 benchmark assessments such as the TENS and
15 the PISA. I'm concerned that the current
16 definition would not allow for those tests
17 which we know are highly rigorous and also
18 there's an opportunity there because a lot of
19 them are translated into other languages so
20 that's actually a cost savings for districts
21 and states. I am wondering why that wasn't

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1 included in this definition, and if we could
2 add that international benchmarked
3 assessments?

4 Ms. Podziba: Patrick, did you want
5 to respond?

6 Mr. Rooney: I'm sorry I don't
7 remember there being particular language on
8 how we will do that? I will find that
9 international benchmark second-degree a
10 define term which makes it a little hard. I
11 think it's a term that people use, but I
12 don't know that it has a clear distinction on
13 what it means. I also say that I think one
14 of the challenges with Tim's an PISA the
15 U.S. -- they are not our assessments our
16 generally speaking given to a random sample
17 of students in schools and they are not given
18 to all kids in any school or all kids in any
19 district. I don't think TEN's is an option
20 to do that I think PISA that there might be
21 one that schools can often. I don't know

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1 whether if it matches up with the
2 international PIS A. I am open to discussing
3 this I am not trying to put Adam Ferr on the
4 proposal. Internationally benchmarked I
5 don't think it's defined has a connotation
6 that you are then looking at the comparison
7 across countries while the nationally
8 recognized vocally high school assessment
9 needs to make sure it's measuring comparable
10 achievement to the state assessment. You are
11 benchmarked at the international test plus a
12 state test it's hard to do those things. I
13 think it's hard for those states to
14 operationalize or try to do that I am open
15 how to do that language. Those are some of
16 the things I would flag for the groups
17 thinking.

18 Ms. Podziba: Do you want me to put
19 that up as proposal based on what Patrick
20 said?

21 Ms. Pin Ahrens: I should have

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1 included this as well because I used Ten's
2 and PISA there's nape and IB test, which I am
3 not quite sure, would be covered under these.
4 I guess I am trying I would like us to figure
5 how to make sure those assessments are
6 included if the district opts to do that?

7 Mr. Rooney: I think under this
8 definition AP and IB would meet this
9 definition. They are training programs for
10 entrance or placement nape like Times an P I
11 S A it's only given to a random of sample of
12 students every two years in reading and math
13 and only in grades four, eight and 12. So I
14 don't know that by its designed it would fit
15 the requirement that all students take the
16 assessment in the district. It doesn't quite
17 it's trying to do a different thing. I don't
18 know how well it would fit what this
19 requirement is?

20 Ms. Evangelista: I was also
21 wondering I think originally we had talked

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1 about having something in there about
2 demonstrating mastery of the standards, the
3 assessment that demonstrate mastery of the
4 state standards. I am wondering I mean then
5 given our discussions that that's what a
6 valid assessment is one that's designed to do
7 that I am wondering why it didn't end up in
8 there

9 Mr. Rooney: I think it is in there.
10 I am not trying to be defensive. It's a
11 measurement and assessment of high school
12 student's knowledge and skills does that not
13 capture what you are thinking?

14 Ms. Evangelista: For clarify I was
15 thinking one that mastered that demonstrates
16 mastery of the state standards and word is
17 used by institutions for placement so
18 something like both or both I guess I have an
19 issue of saying it has to be used for
20 placement or entrance. I think they are also
21 tests that could be down the road that are

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1 rigorous and can assess the standards but
2 aren't necessarily used for placement. I am
3 wondering if there's still a place in there
4 to include both?

5 Does that reflect your proposal? I
6 want to make sure that's your proposal and
7 then we will have discussion it.

8 Mr. Rooney: I don't think we are
9 allowed to say and slash or in regulations.

10 Ms. Podziba: Or is accepted
11 discussion of this proposal I do have Thomas,
12 Janel for this proposal?

13 Ms. Briggs: I believe that would be
14 covered in the fact that the assessment has
15 to go to the states pure review process. I
16 don't know that you would need to repeat that
17 particular phrase here. Right because they
18 would have to go through peer review. I do
19 want to look back to Rita's comment.

20 Ms. Podziba: Thank you. The idea is
21 Kerri's comment is that it's already assumed

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1 in the peer review.

2 Ms. Pompa: The peer review that
3 makes state standards? I was going to argue
4 against the or I think it needs to do both?

5 Mr. Rooney: I would flag that to
6 Kerri's point if you look on page 30 where
7 the state has criteria to how they are going
8 to evaluate these assessments in addition it
9 has to go through peer review which is
10 correct. If you look at romanette four about
11 half way down the page it has to meet all the
12 requirement under 200. B, which is an
13 alignment to state standards. I do this that
14 captures it. I think there's something
15 missing in what you commented maybe isn't
16 entirely coming through on the proposal on
17 the page. To the point of it make sure it's
18 finishing the standards after alignment to
19 the state content. That's covered under peer
20 review and specifically under the state
21 criteria in romanette four.

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1 Ms. Jackson: I think I have notes
2 based on what you said last time Lara. You
3 added for the purpose of demonstrating for
4 content over mastery and then it said your
5 concern was that it would be limiting to have
6 the issue about that they have to be used by
7 higher education institutions of higher Ed
8 because those expectations change and some
9 are not using them anymore. I think you
10 were. I don't know if this was you but I
11 think what you were trying to speak to wasn't
12 so much the issue of the standards, but about
13 the requirement that it's used by higher Ed
14 institutions if they go the way of not using
15 as many or that those change.

16 Ms. Evangelista: I think it was both
17 because I think without that piece when I
18 read it I think SAT ACT that's what you
19 think. I think that adding some more
20 descriptive language opens it up a little bit
21 so we can consider others. When you read it

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1 that's what people think when they think
2 institutions of higher education.

3 Ms. Podziba: I heard comments about
4 people not wanting it in there but I don't
5 know how deep that is? Is there a dissent
6 from this proposal?

7 Ms. Briggs: Not because I disagree
8 with the idea but I don't think that gets at
9 what you want to do.

10 Ms. Podziba: All right. I was going
11 to go to Tom for a new issue.

12 Mr. Ahart: I have proposed language
13 for this same issue to read nationally
14 recognized high school assessment means
15 assessment of high school students knowledge
16 and skills one is administered in multiple
17 states and two romanette one is accepted by
18 institutions of higher education and those or
19 other states for the purpose of entrance or
20 placement into courses an post-secondary
21 education or training programs or romanette

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1 two meets all the requirements and providing
2 valuable information on the students
3 achievement level?

4 Could you read that romanette two
5 again?

6 Meets all the requirements of this
7 section and provides valuable instructional
8 information on the student's achievement
9 level.

10 Ms. Podziba: Can you explain to us
11 you're rational for that?

12 Mr. Ahart: When we limit it to those
13 tests used by post-secondary institutions
14 often times it's very difficult to
15 appropriately make accommodations to make it
16 accessible to all students. We give the ACT
17 to all of our students but we don't use it as
18 an accountability test. We get very hard to
19 get high participation rate. It's very
20 challenging mainly because of the limited
21 window you have to administer the assessment.

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1 Secondly it also doesn't give us very clear
2 information to help us improve instruction
3 and so there are assessments out there that
4 are certainly meet or actually exceed in my
5 case our state test requirements in terms of
6 technical adequacy and validity and
7 reliability that would also provide more
8 useful information on how we can improve
9 instruction for our students but I don't
10 believe I can demonstrate the post-secondary
11 institutions and use that as a placement or
12 an acceptance. Data point.

13 Discussion on proposal?

14 Mr. Rooney: Partly what I am
15 thinking about is really that nationally
16 recognized should have an additional
17 connotation other than just a test given in
18 multiple states. I think that maybe that's
19 language that we have in the statute is
20 nationally recognized that isn't just a test
21 that's given by two districts and two

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1 different states but it's a test that has
2 some recognition and it's not defined so I am
3 trying to think about what that might mean.
4 To your point I don't know that I can answer
5 for the Department right now on what our
6 response would be to this proposal. I guess
7 maybe my question will be just you don't seem
8 worried about the nationally recognized means
9 something other than a test that's given in
10 more than one state.

11 Mr. Ahart: I am not saying that, but
12 I do think the alignment with post-secondary
13 is, it doesn't help achieve the purpose in
14 any meaningful way. It's when it's
15 beneficial to kids and our ability to
16 instruct them. To me that seems like there's
17 not really an alignment there. I understand
18 how it would help demonstrate. If this
19 language if one University says we actually
20 look at that score even if it's a test that's
21 only given in like you said two states that

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1 would make it nationally recognized. I don't
2 think that helps further that cause do you
3 understand what I am saying?

4 I think the other part that maybe I
5 am that nationally recognized meetings as
6 opposed to state test for the exception for
7 the kids in that district to take an
8 assessment and not the states assessment so
9 you are getting away from the expectation are
10 taking the same test and you are providing
11 comparable -- performing across the state
12 that there's some beneficial benefit to the
13 student.

14 Mr. Ahart: That's what I was trying
15 to get at with provides valuable instruction
16 information on the students level.

17 Mr. Rooney: I would hope that the
18 state would provide that information.

19 Mr. Ahart: I would too our state
20 does not. There are tests that do. In my
21 state we don't do either of the we don't do

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1 MARTYR balance should we be absolutely. I
2 can't right now that's not because of my
3 Department. It's not because of my state
4 Department it's because of our legislature.
5 It would be really nice to not waste time
6 administer ago test that is we demonstrate
7 it's not even aligned with our standards.
8 It's not providing any meaningful information
9 and it's punishing especially our English
10 language learners and special education
11 students particularly. We could the a much
12 better job and as it's currently written I
13 don't think we can better meet their needs
14 and there's a number of tools out there I am
15 sure. I have a couple in mind that I would
16 like to move to that would help us do a much
17 better job. I wouldn't want to be selling
18 any one short.

19 Ms. Podziba: I am mindful that
20 Patrick is going to have internal discussion
21 on this proposal, but Kerri, do you have

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1 another comment on it?

2 Ms. Briggs: Because you
3 mentioned -- balance one or both are used for
4 college admission decisions in certain
5 states. Those are the two you mentioned.
6 They would work.

7 That's not what I want.

8 Ms. James: Quick question could we
9 possibly include or prove competency based
10 assessments in this area I am defined
11 nationally recognized high school assessments
12 specifically when you go to I guess I should
13 backtrack in the question if the nationally
14 recognized must include multiple states
15 that's one question. Then the other question
16 I have is could we possibly include language
17 that would allow for competency-based
18 assessments?

19 Ms. Podziba: In the definition where
20 would you specifically put that?

21 Ms. James: I don't know if I have

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1 that answer but I have a different suggestion
2 in the proposal to the definition. To act or
3 multiple states, does not systematically
4 disadvantage certain groups of students over
5 others and is used by institutions of higher
6 education and the rest is included. Which
7 would then allow for competency based
8 assessments.

9 Ms. Podziba: Is the last phrase what
10 you said in the definition or are you saying
11 that's the result of your proposal?

12 Ms. James: Adding does not
13 systematically disadvantage certain groups of
14 students over others and is used by
15 institutions of higher education and the
16 definition would continue. This proposal is
17 to be inclusive of competency based
18 assessments

19 Ms. Podziba: It's a good opportunity
20 to take a break. Okay we have two proposals
21 on the table. I don't know if you had a

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1 chance to check back with people during the
2 break on Thomas's proposal.

3 Mr. Rooney: A little bit. I need to
4 talk to my colleagues more. I won't have an
5 answer on that until tomorrow.

6 Ms. Podziba: We will set that aside.
7 On Aqueelha's proposal is there some
8 discussion to be had on that proposal?

9 Did you want to say some more?

10 Ms. James: I yes I would like to
11 elaborate. It does support part of our peer
12 review. For me the goal is to how do we make
13 sure that certain populations that have been
14 subject to taking the SAT and or ACT in the
15 past have not faired very well. How do we
16 speak to other assessments? My goal is to be
17 inclusive of competency based assessments
18 Annie additional future assessments

19 Ms. Briggs: On that freeze how is
20 that different than the provision earlier in
21 the reg where we are talking about the

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1 benefit language I forget what it's called
2 exactly. They can't afford the benefit that
3 no one else gets or that language it's sort
4 of the same thing.

5 Ms. James: That's what I meant when
6 it was reinforcing --

7 Ms. Briggs: I don't read that as
8 competency based assessments. I was thinking
9 you were going to suggest additional
10 language?

11 So I don't have that language
12 certainly am open to anyone who may have a
13 recommendation for that language. I agree
14 that it does reinforce what's already said
15 and maybe it doesn't speak to competency-
16 based assessments. I would like to broaden
17 that narrow definition of nationally
18 recognized high school assessments.

19 Ms. Jackson: To Kerri's point I
20 don't think though that the line does not
21 systematically disadvantage their groups over

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1 others which I agree would be ideally covered
2 in peer review is the same as not be given or
3 benefit from the same way because that's more
4 about accommodations such that like if you
5 receive an accommodation your score wouldn't
6 have an asterisk next to it. I think there's
7 two different issues.

8 Mr. Hager: You don't have the actual
9 language but your goal was to include
10 competency-based assessments. As far as our
11 understanding is there they are not quite
12 there to give you the definition you need to
13 under 200.2 the general requirements really
14 for that you think that's the type of thing
15 that the pilots are tended to do. You know
16 this could be the competency based
17 assessments is something that would be
18 appropriate for pilot. At this point as far
19 as our understanding at the state of the
20 field the competency based assessments they
21 are not quite there yet. They are moving

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1 there but they are not there right now. We
2 would have a concern with specifically you
3 know referring to the competency-based
4 assessment. We love the idea of not
5 systemically disadvantaging anyone.

6 We have got a proposal and not a
7 proposal but responses to a not proposal. If
8 I can separate those out, so LARA is your
9 comment on proposal or competency based
10 testing?

11 A combination. I just wonder if
12 Thomas's proposal can incorporate that. I
13 think the idea is they are not there yet but
14 with these regulations it could be ten or 12
15 year that is we are looking so we want to
16 have an opportunity to write nit a way when
17 they do get there people can use those. So I
18 am you know given the last part of what
19 Thomas said I just wonder if that would cover
20 things like competency based and other kinds
21 of assessments that maybe start off with the

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1 pilot states but that can become recognized
2 as nationally recognize assessments that
3 other states can use?

4 Ms. Podziba: I don't want to talk
5 about competency-based test yet. I want to
6 talk about the proposal on the table. Is
7 there any further discussion about this
8 proposal? Derrick is there a comment or
9 proposal?

10 Mr. Chau: I think so. It's really
11 the second part of the proposal it sort of
12 gets at what Thomas mentioned and some of
13 what Rita mentioned earlier as well. I was
14 wondering if we could consider changing some
15 of the language the part is about accepted
16 institutes of higher Ed and other states. I
17 was wondering if we would be open to changing
18 it to recognized by institutions of higher
19 education. The reason why I change the word
20 to recognize versus accepted is because
21 accepted in my mind implies a slightly

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1 different use at the universe level where
2 there's actual documentation they are using
3 it. Whereas recognition is simply just that
4 the University can write a letter saying that
5 this is a valuable assessment that we may or
6 may not use it but we find it valuable for
7 our students to have taken this assessment.
8 I think it might be opening things up more an
9 then to take off the rest of it kind of might
10 get at some of what Rita is talking about in
11 terms of international piece in opening it up
12 for future assessments that may not exist
13 yet. We have already discussed in prior
14 meetings that some of the assessment that is
15 we have in our mind may not actually fit. I
16 just want to put it out there.

17 Ms. Podziba: Aqueelha, do you accept
18 that as a friendly amendment to your
19 proposal?

20 Ms. James: Yes.

21 Ms. Podziba: Further discussion of

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1 what's listed as alternate proposal two?
2 Patrick is this something that you need to
3 take back or can I call a question on it?

4 Mr. Rooney: What is a state how
5 would a state be asking to do? What would we
6 ask the state to do or what would a state
7 have to do to demonstrate or
8 systematically -- over others? I am trying
9 to think about operationally this. I am
10 still struggling a little bit I don't know
11 what others think about that. It will help
12 me understand what our opinion would be.

13 Ms. Briggs: It's one of the reasons
14 I think that previous language is per happen
15 as little clearer because it talks about the
16 benefit afforded based ton combination of
17 things. If you take the test and it's
18 accommodated you don't get the benefit from
19 it you know that's a problem that seems
20 really clear to me. This I am with you this
21 seems a little vague like I am not

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1 particularly supportive of it. I do like the
2 friendly amendment part.

3 Ms. Podziba: People from states what
4 would you, what would you do in response to
5 Patrick's question. How would you
6 operationalize this definition?

7 Mr. Evers: I don't know. I supposed
8 we would look at data that would indicate
9 that certain groups were disproportionately
10 not taking the exam I don't know. We would
11 have to look at the data to be honest with
12 you this whole thing would be extraordinarily
13 difficult to not just who is advantage or
14 disadvantage of take ago test but Wisconsin
15 or any state of starting to do a peer review
16 on numerous tests I don't know how we would
17 do it Frankly. That's a concern.

18 Okay any other thoughts on how to
19 operationalize this definition?

20 Mr. Cheeks: When this was brought
21 forward did the person that brought the

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1 additional language talk about
2 operationalizing? Because it hasn't come
3 from what was the thinking behind this
4 additional language?

5 Ms. James: As previously stated it
6 really was to somehow somehow reach a goal of
7 being inclusive of students who would be
8 better served taking assessment such as
9 competency based assessments. I know you
10 don't want to hear any more about it. I am
11 answering his question. That's the thought
12 process behind it. Even to be more to give
13 another example I am just thinking about
14 newcomers specifically that come in the 11th
15 grade and or that may even beginning at the
16 beginning of their 12th grade year how do you
17 make sure that this narrow definition is
18 inclusive of students I won't say 12th grade
19 because then someone is going to say they
20 have a year based upon the language and so I
21 will stay tenth grade. How do you make sure

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1 we are including all students and giving them
2 the opportunity to take certain assessments
3 that will capture their thinking, their
4 mastery level. I don't have the answers
5 operationally. My lens isn't there. My lens
6 is at the school level.

7 Ms. Podziba: I apologize that the
8 goal of this was to get to inclusion of
9 competency based testing, so perhaps should
10 we withdraw this proposal if it doesn't do
11 that and then I think you are asking people
12 if there's a way to write it such that
13 competency based testing is allowable. Ron
14 raised the issue that it's not there or not
15 ready for prime time yet, but Lara raised the
16 point is there a way to write it so when they
17 are available in that way they would become
18 possibility?

19 Ms. James: Yes, I would agree with
20 Lara's statement maybe just adding to
21 Thomas's recommendation of romanette two

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1 words such as competency-based assessments if
2 we go back to that. If it is accepted.

3 Ms. Podziba: I wonder Patrick if
4 it's getting complicated and can we give it
5 back to the Department, and can we have the
6 Department take a crack at putting these --

7 Mr. Rooney: I cannot promise
8 pristine or clearness but we will take it
9 back (laughter).

10 Ms. Podziba: Great. Lara, I am
11 aware that we do the definition before we do
12 the rest of the paper. I hope it's okay to
13 go back to the rest of the paper now that we
14 have a sense of what the definition might
15 say? I think we are at page three any other
16 items to discuss on 200.3 A one or two? I am
17 not including romanette one at the very
18 bottom of the page.

19 Ms. Ricker: Thank you I just am
20 really concerned about the one assessment
21 chosen for all high school student ins an

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1 LEA. For a couple different reasons, so when
2 you use St. Paul as my example. I need to
3 understand this. There's six suburbs around
4 St. Paul that all have one high School.
5 Theoretically the state of Minnesota could
6 approve all six of those different LEA's to
7 have six different tests because they are
8 independent school districts. St. Paul,
9 which has six comprehensive high school in
10 one district, must choose the same test for
11 all six high schools.

12 That's correct.

13 Ms. Ricker: Just because of
14 boundaries of a school district students will
15 be taking the same test of each other when
16 sometimes each just across the street they
17 could get into another school district and
18 take a different test at a high school that
19 might be more relevant to what their future
20 plans are and things? And so our earlier
21 discussion around the 95% had been the more

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1 relevant you make your assessment system the
2 less attractive you are going to make opting
3 out and since we have seen a considerable
4 number of opt outs in the country at the high
5 school level I think the more relevant we can
6 make the choice of however we are going to
7 define it or come to a definition we actually
8 will offer or perhaps not the perfect
9 relevancy for every child in a district but
10 the highest level of relevancy possible. So
11 I am struggling to understand why St. Paul
12 because of the boundaries of its school
13 district would be held to one test and
14 therefore they are going to have to make up a
15 more generic decision than south St. Paul
16 which has decided to go like K-12 and wood
17 bury which has decided K-12 ID or still water
18 that's decided to go advanced placement and
19 other districts that already have a lot of
20 advantages.

21 Ms. Podziba: Patrick do you have a

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1 comment or Delia?

2 Ms. Pompa: It's not just geographic
3 location it really is a jurisdiction. It
4 just happens that one school is an LEA and
5 another school there's six LEA's. It doesn't
6 have anything to do with gee I don't go If I
7 in my mine. I think the second piece I react
8 to. I understand you are coming from the
9 standpoint of the student. I could come from
10 the standpoint of the student on another
11 side. How do you determine relevance? It
12 seems to me that the assessment should be
13 relevant for all kids because we are trying
14 to prepare them all for the same thing which
15 is high levels achievement. I worry when
16 adults start saying that's not relevant
17 because his future career is this or that? I
18 get concern that is going down that road we
19 are moving away from equity rather than
20 toward it.

21 Why would we let any LEA make the

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1 choice?

2 Ms. Pompa: Because the law says so.

3 To me this piece of the law should be the
4 exception rather than the rule. In
5 implementation especially since we are making
6 it hard enough it probably will be the
7 exception.

8 Okay.

9 Ms. Evangelista: Just for
10 clarification I didn't know that the law
11 actually said that it had to be that the LEA
12 had to administer the same law does it?
13 Okay. And just I am wondering I mean can we
14 have something in there that it's at the
15 states decision or discretion to do that
16 because it also just to add to Mary Cathryn
17 you know we will also have a situation in New
18 York and other large cities where charter
19 schools within the district will have that
20 option and kids who don't attend the charter
21 schools won't. So again, I think you know I

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1 can for see lots OF problems because of that.

2 Is there a way to include something that
3 states can decide? If it is a problem for
4 states than that's you know they can work
5 that out with their LEA's? Derrick?

6 Mr. Chau: I am going to piggyback.

7 We are talking about an exception in terms of
8 which districts we are talking about
9 exceptionally large districts. I am
10 wondering if we might make an exception or at
11 least an opportunity for states to make a
12 decision around that. I know that I think in
13 the last session I did propose the option for
14 districts to as a part of their proposal to
15 the LEA to state how a time line for how they
16 might implement in all their schools just to
17 give the larger districts an opportunity to
18 implement this in a more peace meal way to
19 ensure that all students will be taking the
20 assessment. You have to recognize that some
21 schools and some students right now are

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1 probably better prepared than others to start
2 taking some of these assessments. I think we
3 just need to recognize that there's the
4 difference between schools within a district.
5 I am not saying I'm not advocating for there
6 to be permission for a district to
7 imperpetuity to allow for that to happen. As
8 long as there's a plan for them to get to
9 that point. There should be some leeway for
10 that and if we need to have some sort of
11 qualifiers in terms of the size of the
12 district do you think that would be
13 reasonable. I just do want to echo that what
14 Mary Cathryn mentioned also.

15 Ms. Podziba: It sounds like there's
16 a conceptual proposal. I didn't get language
17 but conceptually that there be something
18 added for certain size districts that have a
19 plan with a time line. Patrick?

20 Mr. Rooney: I appreciate that the
21 concerns that Lara and Derrick are raising, I

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1 mean this is a district permission that's in
2 the law so I appreciate that there's going to
3 be border areas where few high schools could
4 be right next to one another but down the
5 street and different districts and they are
6 going to make different selections. I don't
7 think there's a way around that. I kind of
8 think that it seems okay because this is a
9 districts decision to do that. However, if a
10 district chooses to do this and this is an
11 option for districts to request this of their
12 states. It is not a requirement they have to
13 do this. This is a permission not a
14 requirement, and we feel strongly that it
15 should be district wide decision and once you
16 get away from that you run the risk that this
17 becomes one test for kids the less well off
18 schools with less resources and not out of
19 any intention but that just maybe the school
20 that is are more ready for it and the time
21 frame for some of the other schools to get

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1 ready or the infrastructure might be so far
2 the way that you are creating separate
3 expectations without any ill intent obviously
4 but that maybe what happens and that we want
5 to create a safeguard against that I am going
6 to use the word safeguard. I think that is
7 why you know we feel strongly that district
8 wide is the if districts wanted to do this
9 then it should be a district wide decision.
10 The other thing is we talked a little bit
11 about this in session two. Right now when
12 states change assessments they change the
13 assessments across the entire state all at
14 once. In California you switch to smarter
15 balance last year it wasn't just all the
16 schools in LA unified. It was every school
17 in California did it all at once. This is a
18 permission for districts to do this. When
19 they are ready to do it across the district
20 that this is an option for them. This is
21 something that they require states to do it

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1 seems in this permission they should do it
2 district wide. To me it doesn't seem like
3 it's a reasonable expectation. I realize
4 it's harder in LA unified than the small
5 districts outside St. Paul that Mary Cathryn
6 is referencing.

7 Ms. Podziba: We have a lot of
8 discussion on this I haven't heard a
9 willingness to move on from that. I am going
10 to ask for new items of discussion.

11 Mr. Hager: It would be little B
12 numeral two sublet one in the red line, if
13 I'm saying that right? The red line at the
14 top of page four and the cling of bottom of
15 page three. It's talking about this language
16 elsewhere. Whatever you come up with
17 elsewhere.

18 Mr. Rooney: Our intent would be this
19 came out earlier in both discussions of five
20 ark and four A the same language appears
21 should be here for three we are working on a

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1 revised proposal that we will bring forward
2 tomorrow morning hopefully that addresses
3 everyone's concerns. It will make it clear I
4 think I am looking for that will apply in all
5 three places.

6 Ms. Podziba: I was just noticing the
7 definition on page five. Are there any other
8 new items on issue paper 3? I realize that
9 we have five the definition will come back.
10 Is there any dissent on anything in issue
11 paper three not including the definition?
12 Okay.

13 Mr. Chau: I kind of get the sense
14 that number two there were a couple of
15 comments from Lara and Mary Cathryn about
16 addressing the entire district.

17 Ms. Podziba: I do remember you said
18 you knew this was the way it was going to be
19 and were going to go along with it.

20 Mr. Chau: That's before other people
21 made comments. I am wondering if that's

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1 something that we can approach and offer up
2 language? I appreciate Patrick's comment and
3 implementing an assessment all at once. It
4 came with several years of planning an
5 planning and implementation and billions of
6 dollars of professional development fund that
7 is came along with that. I hope that people
8 will appreciate that in a large district the
9 cost of implementing curriculum and aligned
10 with those assessments. It's still ongoing
11 an unfunded. That we have that it is a
12 serious issues for those smaller districts.
13 It isn't as much as an issue in a small
14 district when you have one high school and a
15 couple dozen teachers versus 120 high schools
16 in LA unified.

17 Ms. Podziba: Are you going to come
18 back with some language?

19 Mr. Chau: Yes.

20 Ms. Podziba: Can you run it by a
21 couple other people?

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1 Mr. Chau: Sure.

2 Ms. Podziba: We are going to move to
3 six. There are only a few items on this.
4 First of all should we also use the clean
5 version?

6 Mr. Rooney: I would prefer you use
7 the clean version. It's easier to read.
8 This issue paper the further clarify we tried
9 to gray out anything that we have on issue
10 papers this is a catch all we had questions
11 left over from issue two that we promised to
12 take back and think about. There's a couple
13 of things I want to highlight here that we
14 haven't talked about and that we left open
15 from issue two or session two sorry.

16 Okay so I think the first one is page
17 3 line 36?

18 Mr. Rooney: Yes. In this actually
19 as a cross-reference to end of 200.6 if you
20 sort of read this if I can. On page 23 this
21 is where we are going to go back and forth on

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1 what's here on page three and four and what
2 appears on page 23 and the reason for doing
3 that is in the discussion in section two we
4 spent some time talking about the definitions
5 for the different groups which appear here on
6 page three and four will be defined status as
7 a child in foster care and on page 23 where
8 we, the current regulations included
9 information about status of homeward child
10 and migratory child. In session two we
11 consolidate in a consistent in the two places
12 how we talk about these groups. So keeping
13 in mind that there's these two places. On
14 page three and four if you start with Roman
15 numeral four on-line 26 actually sorry right
16 about that to Roman numeral three on-line 24
17 this is where we define it had different
18 subgroups that the state assessment system
19 needs to be providing data for because
20 elsewhere in the law state has to report on
21 this data on state or district report cards.

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1 This section is just requiring that states
2 make sure they can produce data from their
3 assessment systems from all of these groups.
4 There's each ethnic group and then status as
5 an English learner and we added the
6 definition of where that comes from section
7 8101 of the ESSA of the definition of what it
8 means. The next one is status as a migratory
9 child and that is we are trying to cross-
10 reference where those definitions really are
11 to hope to make it simpler for states
12 implementing this. Section 1309 -- part C
13 where they talk about migratory children.
14 Children with disabilities reference IDEA we
15 talked about that a fair bit. Romanette six
16 economically disadvantaged students we did
17 not define. Romanette 7 on-line 33 stat of a
18 homeless child section 725 of title 7
19 of -- homeless act. And we made that change
20 thanks to Audrey who caught our switching the
21 numbers last time and then romanette 8 where

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1 we had the status of the child in foster
2 care. This has been changed slightly. We
3 took this from existing U.S. Department of
4 health and human services regulations for
5 foster care and we clarified that when we
6 were talking about where this came from and
7 it comes from the Social Security Act, so
8 title 4 E of the Social Security Act. And
9 then romanette 9 on the top of page four
10 on-line six. Status of a student of a parent
11 who's a member of the armed forces. We spent
12 a fair amount of time talking about this.
13 This is where we are clarifying what's in the
14 statute whether the statute talks about one
15 on one D 5 we have change that had to 101 D
16 one because that is actually a parent in the
17 active duty in the armed forces not defined
18 as active duty in the national reserves. And
19 one second I will we actually included in the
20 binders I think yes what those definitions
21 are if it's helpful for the armed forces

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1 ones, so if you go just after the issue paper
2 there's a supplemental material for this
3 issue paper which provide it is excerpts from
4 the U.S. code for what it means for different
5 duty status if you want to see what the
6 actual language is for 101 A four an 101 D 5
7 and what they mean.

8 Ms. Podziba: Is that a good place to
9 stop?

10 Mr. Rooney: I want to make sure you
11 see that reference an we spend a good time
12 about whether we should include D one active
13 duty in the arm forces versus D five which is
14 national guard duty which is not the citation
15 that's in the statute but we think D one is
16 the appropriate status. This is not about
17 actually reporting the information but this
18 is making sure that the assessment system has
19 the ability to support the data because
20 elsewhere the districts have to support this
21 information. This is making sure that states

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1 can produce this data. I think it's a good
2 stopping point. I can talk about the cross
3 reference in 200.6 in a minute. I will give
4 people a chance to react to this or at least
5 read it. Is there any discussion of this
6 section essentially from the bottom of page
7 three to the unshaded area on page four?

8 Ms. Briggs: Can you repeat why you
9 switched from D one on the military piece
10 from D five to D one why you just didn't add
11 D one?

12 If you read the text on page four of
13 the proposed regulation, which comes from the
14 statute. It says status is a student of a
15 parent of armed forces an active duty. I
16 think that the plain reading of that if you
17 look at that supplemental materials D one
18 says the term active duty means full time
19 duty in the active military service of the
20 United States. Which we think is what the
21 language is saying. If you look at D five

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1 the term full time national guard duty means
2 training or other duty other than inactive
3 duty performed by a member of the Army
4 national guard of the United States or the
5 air national guard of the United States. I
6 think we read the language about active duty
7 in the armed forces to be consistent with D
8 one and not consistent with D five. And
9 again. We added D 1 and D five to the draft
10 to the pros regulations back on page four of
11 the regulations that I think I will be adding
12 an additional components that I don't think
13 what it's intended in the language that's
14 included in the statute. It wouldn't require
15 states to report that. It would require to
16 demonstrate that they can report active duty
17 and National Guard and the requirement of
18 what they actually report is a different part
19 of the law that we are not talking about with
20 this negotiating session and that's a little
21 confusing. Hopefully that clarified it.

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1 Any other discussion of this item?

2 Mr. Evers: As I understand it
3 national guard was not part of the
4 congressional intent is that, are you getting
5 me on that one here?

6 I'm not saying that. He's talking
7 about armed forces on active duty. D five is
8 not capture armed forces active duty.

9 Mr. Evers: I guess again to think of
10 all the National Guard persons in this
11 country that are presently fighting a war and
12 we are not including them in this is
13 disappointing. I'm not saying it's a
14 Department issue it's probably more of a
15 congressional issue.

16 Mr. Rooney: There's nothing that
17 would stop a state from doing this and
18 collecting and reporting that data and they
19 want to what are the requirements for states
20 to show we think active forces or armed
21 forces active duty as D five would be both

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1 capture that is point of cross reference.
2 Just to piggyback we have sometimes up to 3,
3 000 National Guard soldier that is are
4 deployed. I am thinking that the parents and
5 the children would be as much as someone who
6 is active duty. We are not considered a
7 military state but we do have up to 3, 000
8 families if he canned.

9 So is someone proposing to add D five
10 is that the proposal to add D five?

11 I would like to see it added.

12 Ms. Podziba: I would like to see D
13 five, comments on the proposal to add D five?

14

15 Ms. Jackson: I think that we already
16 proposed that. We asked that and we decided
17 that you couldn't deliver that, correct?

18 We talked about it. We talked about
19 it and I don't know if we made a proposal and
20 discussed it. This would not require that
21 states report this information. This would

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1 just create an expectation that state has
2 to demonstrate that their assessment has to
3 produce this data. They would not have to
4 report this data that's not what we are
5 negotiating that the reporting requirements
6 are very spelled out in a different part of
7 ESSA. This would say if this were in here
8 that states part of peer review would have to
9 demonstrate that this assessment can be
10 disaggregated and national guard active duty
11 and they have that code anything data system.
12 It wouldn't require them to include it in
13 there.

14 Ms. Rigling: What I wanted to do is
15 go back to the reporting requirement because
16 as you know the reason we included this in
17 the assessment regs is because you can't
18 fulfill the reporting requirement unless you
19 have the proper flags to be able to
20 disaggregate the information. In looking at
21 this section in the report card requirement

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1 on this I think that it's pretty clear what
2 Congress wants to be reported. It says a
3 student with a parent who is a member of the
4 armed forces as defined in section 101 A four
5 and as you can see from what's include ed in
6 your binder 101 A four is a definition of
7 armed forces. Then it goes onto say on
8 active duty and then the parents that say as
9 defined in section 101 D five. 101 D five
10 again as you see is not a definition of
11 active duty it's a definition of full time
12 status in the National Guard. The definition
13 of active duty is actually in D one, so we
14 are just really following the words of the
15 reporting requirement. I think when you sort
16 of break it out in those two sections with
17 parenthesis as define ed in it's pretty clear
18 that just an error in the citation but what
19 they seem to really want to be included on
20 the report cards is active duty in the armed
21 forces.

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1 If the group wanted to add that I
2 don't think we would have a problem with it.
3 I think we were just using the only one
4 notation that's the most relevant to match
5 the language that's there.

6 Ms. Podziba: Just for the purposes I
7 am hoping that we can finish six before the
8 end of the day. I hope it's okay to go over
9 by 15 minutes or so if we need to do that?
10 The proposal is to add D five is there any
11 dissent from doing so? Richard?

12 Mr. Pohlman: I just want to point
13 out that I don't have the ability to dissent
14 what's being proposed is in conflict with
15 itself. It says such term does not include
16 full time National Guard duty. Adding D five
17 would clarify the term full time National
18 Guard duty. I would not sure it would confer
19 a new so that I guess I am there's a conflict
20 in having both D one and D five statutorily
21 that I am not sure that can be resolved.

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1 That's only to support what Kay is saying
2 which is this is a correction in a drafting
3 error and then by adding D one an D five we
4 may actually create additional confusion.

5 Ms. Podziba: Do you want to withdraw
6 this proposal based on the discussion or
7 should we move forward to get consensus on
8 it?

9 Ms. Mack: I certainly think that
10 this segment should be included but and if it
11 conflicts could we get clarification as to
12 whether this was an error in citation? We
13 believe it was I would like to see it
14 concluded.

15 Ms. Podziba: Is there a proposal on
16 the table to add it, D five.

17 Ms. Jackson: I am not a Mr. Evers.
18 (laughter) I say it in a good way and the
19 workload you are putting in. I am wondering
20 if it makes sense to require states to
21 disaggregate data if they are not required to

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1 report. I am hoping states will be able to
2 say this is what the original was the
3 committee thinks it's valuable to include but
4 not to require the states to do that work if
5 they are not going to follow through with
6 reporting since we can want require that.

7 Ms. Podziba: Rita, do you have
8 another issue?

9 Ms. Pin Ahrens: I want to go about
10 the status of child in the foster care. I
11 don't see it addressed here, which is how a
12 child or when a child is designated as foster
13 care. Is that at the time of assessment? Is
14 it if they are in foster care at any point
15 during the school year, and what about the
16 children who go in and out of foster care?
17 How are we addressing that? So I just want
18 to know if that's if that's addressed under
19 title four E of the Social Security Act,
20 which we don't have in front of us. Or how
21 it or how your resolving this issue of

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1 children who may go in and out of the system?

2 Ms. King: My preference is that we
3 not speak to that in this regulation and that
4 be reserved for the reporting requirement
5 because there's going to be a question about
6 individual state data systems and making sure
7 that we are getting the right thing. I did
8 we reached back out to our foster care
9 advocates about this question specifically
10 the -- we hold this and not add it to the
11 delegation. It's the ability to aggregate an
12 assessment. It's relevant to when you are
13 reporting it maybe one time you know it maybe
14 an October first count and every child in
15 foster care it maybe any child in foster care
16 for more than 24 hours or more than two weeks
17 or more than six months or something. I
18 think that's a conversation that happens in
19 the context of the reporting requirements and
20 the regulation that is govern that and that
21 would be my personal preference would be to

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1 leave it unaddressed here and certainly
2 address it in the regulations governing the
3 111 H reporting requirements

4 Ms. Podziba: Does that work for you
5 Rita?

6 Ms. Pin Ahrens: Yes.

7 Ms. Podziba: Any other discussion on
8 the bottom of 3 through the top of page four?
9 Okay. Patrick, do you want to take us to the
10 next section?

11 Mr. Rooney: So the next things for
12 us to discuss is to page 23 which is where we
13 cross referenced the same groups of students
14 so in the last version that we brought during
15 session two there was at the bottom of this
16 was a regulation there was a definition of
17 migratory students and children, homeless
18 children that was spelled out in this section
19 of the regulation and is now proposed. I
20 think there was discussion from all of you
21 trying to make it consistent whether we just

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1 discussed it. As a result we have remove it
2 had definitions from this page on page 23 and
3 they all then appear at the previous piece
4 that we just discussed. They just walked us
5 through here and we now include, continue to
6 have a discussion of these groups of students
7 but we now are going to put them together as
8 under a highly mobile student lead in to this
9 section I. The state must include it's
10 assessment system of highly mobile students
11 then we reference back to what we just talked
12 about where the definition really occur and
13 it's about all of these groups now again
14 included that status of migratory child and
15 homeless child and status of child in foster
16 care and students with participants of the
17 armed forces active duty.

18 Ms. Jackson: This is thumbs up for
19 that and my only thing is that actually above
20 and I am naming it because it's in gray and
21 we probably won't come back to it. Earlier

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1 in paper 5A you cited section 6151 of the act
2 to clarify that. I want to make sure that's
3 also included in here.

4 Mr. Rooney: We did make some
5 changes. That's a good catch. What you see
6 on the top of page 22 and 23 was what we
7 discussed. We made changes to this language
8 to delete the reference to Alaska native in a
9 couple places here in G and then we changed H
10 to reference the other title six of the ESSA.
11 We will make those changes in the full
12 package that we bring back so that you have a
13 version that sees all the language that we
14 are hopefully getting consensus on.

15 Ms. Podziba: Is there any other
16 discussion of page 23 line 10-17?okay.

17 Mr. Rooney: We have one other thing
18 on page 24-200.8 is about assessment reports.
19 We had not discussed this because we had not
20 proposed any language for the current
21 regulations. We shared it with you on

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1 session one and two. You can see the
2 non-grayed out piece on-lines 13 and 14 where
3 we previously said that the reports had to be
4 provided and understandable uniform format.
5 We have now revise that had to then refer
6 back to 200.2 E which is the language we
7 talked about a little bit this morning about
8 how they make that information available to
9 parents an including in accessible format for
10 participants who have a disability. I am
11 making sure we are being consistent with
12 those reports in that information.

13 Ms. Podziba: Any questions on that?
14 Okay is there any dissent from achieving
15 attentive agreement on those section that is
16 we just discussed those unshaded sections in
17 issue paper six? Okay. All right. I don't
18 have anyone signed up for public comment is
19 there anyone in the audience who would like
20 to address the committee at this time? Okay.

21 So the next steps so tomorrow we will start

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1 with supplement not supplant. And then we
2 will go back to assessment do you want to say
3 a little bit about what the committee can
4 expect to receive tomorrow?

5 Mr. Rooney: I am not sure. I
6 appreciate you asking me that. I know my
7 colleagues have been working furiously and
8 there's many e-mails I am not apart of. To
9 address a lot of questions I am trying to
10 raise. Hopefully we will have proposal or
11 language particular around the areas we had
12 agreement on concept but not necessarily the
13 language worked up we will have revised
14 language for us to talk about tomorrow when
15 we come back with assessments.

16 Ms. Podziba: We will focus on in
17 assessments is 4 A we have got four sections,
18 two are clarifications an one is that
19 nationally recognized assessment standards
20 and then E one and two which is the
21 definition and then on four we have got four

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1 paragraph four romanette one and romanette
2 two both A and B and those pieces of issue
3 three that we just discussed. I have them as
4 A 2 and romanette one.

5 I think it's just A two.

6 Ms. Podziba: A 2 and the definition.

7 Okay and so that's what we will focus on onto
8 tomorrow. We will have to move pretty
9 quickly to get through everything. We
10 covered everything we wanted to cover today.
11 I think we're in good shape to cover our work
12 tomorrow?

13 Ms. King: The expectation is that we
14 are bringing to the group tomorrow those of
15 us want to include the disproportionately
16 precondition for waiver alternative language
17 for that and then also alternative language
18 for romanette three in the definition of
19 cognitive disabilities. Is there anything
20 else that you know of that I think that was
21 it right?

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1 Mr. Rooney: I think that's right.

2 Thanks.

3 Mr. Rooney: Tomorrow we are not in
4 this room.

5 It was easier to get in here.

6 I enjoy the nice open space.

7 We will be back in the auditorium in
8 the main building tomorrow. You can leave
9 your nametags and your name whatever these
10 are called the tents thank you. We will
11 collect those. You should take your binders
12 and any belongings you have. If you can
13 throw away your trash. Thank you for today.
14 We are looking forward to one last session
15 tomorrow.

16

17

18

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