Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 19, 2016

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

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U.S. DEPARTMENT OF EDUCATION

Negotiated Rulemaking

400 Maryland Ave. SW

Washington, DC

Elementary and Secondary Education Act

Title 1, Part A Assessments and

Supplement Not Supplant

Washington, DC

April 19, 2016 9:05 a.m.

Court Reporter:

Kim M. Brantley, C.S.R.

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1 NEGOTIATED RULEMAKING COMMITTEE:

2 SUSAN PODZIBA, Facilitator

3 PATRICK ROONEY, Moderator

4 ARY AMERIKANER, Moderator

5 KAY RIGLING

6 DELIA POMPA

7 JANEL GEORGE

8 LIZ KING

9 RON HAGER

10 MARCUS CHEEKS

11 TONY EVERS

12 LYNN GOSS

13 REGINA GOINGS

14 RICHARD POHLMAN

15 ERIC PARKER

16 LARA EVANGELISTA

17 MARY CATHRYN RICKER

18 AUDREY JACKSON

19 RYAN RUELAS

20 KERRI BRIGGS

21 LISA MACK

22

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1 NEGOTIATED RULEMAKING COMMITTEE CONTINUED:

2 RITA PIN AHRENS

3 AQUEELHA JAMES

4 LESLIE HARPER

5 THOMAS AHART

6 DERRICK CHAU

7 ALVIN WILBANKS

8

9 ALSO PRESENT:

10 EXPERTS: PEGGY CARR, KENJI HAKUTA

11 KAREN MILES

12 and

13 JUDY BECKER, Technical Assistant

14 Office of the General Counsel

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1 MS. PODZIBA: I'm going to ask everyone
2 to please take their seats and we'll get started.
3 Good morning. Welcome back. This is
4 our last day, so it's the last lap of what's been
5 a very long and fun ride.
6 So, we're going to dive right into
7 Supplement Not Supplant. We'll spend as much time
8 as we need on that, and then we'll move back to
9 Assessment.
10 The Department is working now to bring
11 back the whole package on Assessment, so we'll use
12 that to go through the final issues and then that
13 package.
14 So, Patrick, I'm going to turn it to
15 you, or is Ary going to get us started?
16 MR. ROONEY: Yes, good morning. I'm
17 going to turn it over to Ary, who is going to walk
18 us through Supplement Not Supplant.
19 MR. AMERIKANER: Can people hear me?
20 Yes. Ok, great.
21 Welcome back to Supplement Not
22 Supplant, everybody; our last day together, so we

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1 will embrace it.

2 I wanted to just quickly walk through

3 the changes that we made in the most recent

4 proposal and then open it up for discussion and

5 questions.

6 Leslie, did you want to do a blessing?

7 MS. HARPER: Thank you.

8 MR. AMERIKANER: Sorry, I'm getting

9 asked by multiple people.

10 (Leslie Harper says blessing in

11 Ojibwemowin language.)

12 MR. AMERIKANER: Thank you, Leslie.

13 Sorry for the false start, everybody.

14 So, now, we will turn to the updated

15 draft regulatory text, which starts on Page 4 of

16 your issue paper, and I will walk through the

17 changes.

18 We hope that this time the color-coding

19 is the same as it was, and even the font is the

20 same as it was in the Assessment issue papers.

21 So, again, the gray shaded areas are

22 the areas that we believe will not require

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1 substantial additional conversation, and the
2 non-shaded areas are what we're going to focus on
3 today.
4 So the first change that we made in our
5 materials for Assessment (3) is at the bottom of
6 Page 4 where we added a "such as" clause, "such as
7 a methodology that allocates resources, including
8 staff positions, or a methodology that allocates
9 funding for a weighted student funding system".
10 As you guys know all know, at this
11 point in your regulatory writing career, the "such
12 as" clause is certainly not limiting. It is not
13 an exclusive list. It is purely there to provide
14 some examples and some clarity. There was some
15 concern at the table last time about whether the
16 inclusion of a weighted student funding formula
17 would be able to meet the requirements. So that
18 was added to be helpful for examples of clarity.
19 The next change is at the top of Page 5
20 where we deleted what was our subparagraph capital
21 B, which talked about two requirements that a
22 methodology must ultimately result in including an

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1 amount of state and local funds that was
2 sufficient to allow and enable each Title I school
3 to allow two things: One was the basic education
4 program, as defined under state or local law, and
5 the other was in conjunction with the IDEA
6 funding, services required by law for students
7 with disabilities, and then also services required
8 by law for English learners.
9 This is not an easy thing to cut. We
10 think that these are important provisions. We did
11 however hear a lot of concern about the clarity of
12 this and we did not -- we heard sort of a uniform
13 concern about the lack of clarity, and we did not
14 come up with a great alternative proposal for how
15 to be more specific. So in response we cut that
16 section of the draft.
17 We also in the next new romanette (iii)
18 added a paragraph that says that "A district that
19 is unable to meet the requirement," the remaining
20 requirement in paragraph (B)(1) romanette (ii),
21 "will not be out of compliance with this section
22 unless it was also unable to meet the requirements

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1 in one or more of the preceding three school
2 years".
3 So this is designed to address some of
4 the concerns around if in a particular year
5 something happens that's unexpected, a particular
6 teacher retires who is very senior and the school
7 district needs a little time to adjust to that, it
8 needs to hire a first-grade teacher or something.
9 This is to say you can miss one year and not be
10 out of compliance. But if you miss two years out
11 of four, you would be actually out of compliance.
12 The next paragraph, paragraph (ii),
13 Districtwide Costs or Services, we did not change
14 any of the substance here. We got a couple of
15 questions about what color it was supposed to be.
16 As you guys remember we did the
17 color-coding pretty quickly in the middle of the
18 day last time. We think it was defensible as blue
19 but not worth fighting about, so we put it in red
20 before sending it back out. So that change
21 happened after we e-mailed it to you guys. The
22 version in your binder has red. The version that

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1 we e-mailed out had blue. I just wanted to flag
2 that so you wouldn't be confused by that.
3 Then the rest of the changes on the
4 bottom of Page 5 are just conforming edits to
5 having stricken out paragraph (B) above.
6 The next substantive change is on Page
7 6 where we added a new requirement that -- or not
8 a new requirement, a new flexibility that a
9 district may rebut a finding that its methodology
10 does not meet the requirements of this section due
11 to special circumstances related to a particular
12 school's population of disadvantaged students and
13 specific -- and here again we were trying to
14 respond to a concern about particular non-Title I
15 schools that might have had a high concentration
16 of students with disabilities. Especially in a
17 district that has a weighted-student-funding
18 formula, that there might be concern that it was
19 very confusing for not giving that non-Title I
20 school additional funding and we didn't want to
21 penalize that sort of behavior.
22 I'd actually like to start us off by,

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1 and I'm sorry for doing this, but by offering a
2 friendly amendment to our own paragraph here on
3 the second sentence. Specifically this would
4 pertain to a non-Title I school that serves a high
5 proportion of students with disabilities. I would
6 like to say, comma, strike the "or," leave
7 "English learners," and then say comma, "or
8 students from low income families".
9 We think that that will add some
10 importance, additional flexibility and cover some
11 more traditional ranges of lists of underserved
12 students that we normally include. And that was
13 an oversight on our part in drafting.
14 So those are the changes that we made.
15 We would love to hear comments and questions. I
16 will give it back to Susan to continue the
17 conversation.
18 MS. PODZIBA: I know these parts are
19 all connected. Does it make sense to just go
20 sequentially in order r does it make sense to
21 start with the Exceptions first?
22 MR. AMERIKANER: I guess I would

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1 actually be interested if anyone has any burning
2 initial just comments on any part of it. Let's
3 maybe hear where people's minds are first before
4 we go forward.
5 MS. PODZIBA: Liz?
6 MS. KING: I had a question about the
7 timeline in terms of delayed implementation.
8 So, what would be the first year that a
9 district could be noncompliant?
10 MR. AMERIKANER: So we did not change
11 anything in paragraph (4) about the transition
12 timelines. Originally the way it was written, the
13 first year you could really be noncompliant would
14 be '19/'20. As you guys can see under Paragraph
15 4, romanette (i)(B), you can submit a plan to your
16 state for how you will be in compliance in
17 implementing a methodology that meets the
18 requirements, starting in the beginning of the
19 '19/'20 school year.
20 With the addition of romanette (iii) on
21 Page 5 where we said, If you're out of compliance
22 one year, you would have to -- you wouldn't really

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1 be out of compliance until you are out of
2 compliance two or four years, for all intents and
3 purposes that delays from '19/'20 to '20/'21 the
4 first year that a district would be facing any
5 sort of compliance penalties or issues.
6 MS. KING: So then, in that scenario,
7 any district that is out of compliance in '20/'19,
8 '20/'20 would also need to be out of compliance in
9 '20/'20, '20/'21 for it to be relevant if they
10 were not compliant?
11 And so if they were compliant in 12
'20/'19, '20/'20 -- like they have to be
13 noncompliant in both of those years before it's an
14 issue.
15 And then so, if you were
16 noncompliant -- if you were compliant in one of
17 those two years, then it would push to '20/'21 to
18 '20/'22, right?
19 MR. AMERIKANER: Yes, that's right.
20 And we wouldn't even call it noncompliant, right?
21 We would say you weren't able to meet that
22 particular requirement. You wouldn't be

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1 noncompliant for meeting that requirement for two
2 out of four years.
3 MS. KING: The authorization of the law 4 goes to
'20/'20?
5 MR. AMERIKANER: I believe so, right.
6 I assume you're asking a rhetorical question.
7 Yes, right.
8 MS. KING: No, that was an actual
9 question. But, yeah, I'm just trying to figure
10 out -- we can talk about my concerns about it.
11 I'm just trying to make sure I understand. But
12 thank you.
13 MS. PODZIBA: Tony?
14 MR. EVERS: Yeah, I'll have some more
15 comments later, too, but just a basic question is,
16 if a school district cannot meet the greater than
17 or equal to average cost, they're noncompliant,
18 correct?
19 No matter what methodology, if they
20 cannot meet the greater than or equal too
21 criteria, then they will be out of compliance?
22 MR. AMERIKANER: Except for the new

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1 exception in romanette (iv) on Page 6. So if the
2 reason they are not able to meet it is a Title I
3 school with a particular student student
4 population that has high needs and needs to
5 increase costs.
6 MR. EVERS: So --
7 MR. AMERIKANER: A non-Title I school,
8 I apologize, and also what we just talked about,
9 having two out of four years.
10 MR. EVERS: And this is a rhetorical
11 question or comment.
12 So, essentially the methodology remains
13 the same and the bottom line is that greater than
14 or equal to average costs remains the prima facie
15 criterion for deciding whether someone is -- some
16 district is compliant. That's rhetorical.
17 MS. PODZIBA: Regina?
18 MS. GOINGS: Just to piggyback on that,
19 if every student -- I'm sorry, not student. If
20 every school, and many of the schools in the
21 district are Title 1, then how would they be
22 compliant?

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1 MR. AMERIKANER: That's a good
2 question, Regina. So, I think the big distinction
3 is, if -- you didn't ask if all schools are Title
4 I. You asked if "many".
5 MS. GOINGS: All.
6 MR. AMERIKANER: Bu if all schools are
7 Title I, in the past we would have said, You do
8 not -- You, just sort of per se -- well, I don't
9 know if we said this in the past, but that's how
10 I'm envisioning in the future. Comparison between
11 Title I or non-comparison doesn't make any sense.
12 They're either all Title 1 or all non-Title I.
13 So that's how you're envisioning it as
14 well?
15 MS. GOINGS: Yes.
16 MR. AMERIKANER: If many are, but not
17 all, then you would do the comparison nonetheless.
18 And remember as it is written you can do it within
19 a grade span. So you could compare. So if all of
20 your high schools are Title I schools, then you
21 would not need to meet the requirement for high
22 schools because all of your high schools are Title

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1 I. But if some are Title I and some are not, you
2 would compare it.
3 MS. PODZIBA: Delia?
4 MS. POMPA: Can you explain the
5 practical implications of removing (B)(1)
6 romanette (ii)(B), Roman numeral (II)? Got that?
7 MR. AMERIKANER: Are you talking about,
8 Delia, that in conjunction with funds provided
9 under IDEA?
10 MS. POMPA: Yes.
11 MR. AMERIKANER: That provision?
12 Yeah, so, the requirements -- the
13 services required by law for students with
14 disabilities and services required by law for
15 English learners will continue to be required by
16 law for those groups of students.
17 So we are simply -- we are not in any
18 way changing those legal requirements for
19 students. We are simply removing the tie to
20 Supplement Not Supplant of those requirements.
21 MS. POMPA: Which means that if a state
22 does not provide funding for, say, students with

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1 disabilities or English learners, then they can
2 supplant using federal funds?
3 MS. RIGLING: No, I don't think that's
4 true. Because I think if the state doesn't
5 provide funds, the LEA would still need to insure
6 that all of its schools are getting whatever funds
7 they need to provide those services.
8 I mean, the bottom line is it's the
9 LEA's responsibility to insure that its students
10 with disabilities and English learners are getting
11 what's required by law for them to get, and that
12 in meeting the requirement to insure that all of
13 the schools, including your Title I schools, get
14 what they would get if they were not a Title I
15 school, if they need to get the resources to meet
16 the requirement from the LEA if they're not
17 getting it from the state.
18 MS. POMPA: I just want to comment that
19 there are districts and states in this country
20 that do not provide funding and rely totally on
21 federal funds for English learners.
22 In fact, it does have that -- could

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1 have that implication and does in some places.
2 MS. RIGLING: But Title I funds?
3 Currently, they rely on?
4 MS. POMPA: I'm not sure I understand
5 your question.
6 MR. AMERIKANER: She's asking
7 distinguishing between Title I and Title III.
8 MS. POMPA: Right, but if you're taking
9 this out, it's not in conjunction with any more?
10 MS. RIGLING: Do you mean the IDEA
11 funding?
12 MS. POMPA: No. I mean if the
13 school -- if a school district does not have any
14 state or local funds, let's just take English
15 learners, for English learners in place, but they
16 receive Title III funds, they can use those
17 because the supplant does not apply to them.
18 Is that what the affect of this is?
19 MS. RIGLING: I mean, honestly, we
20 don't think taking this out changes the
21 requirements for a school district, because
22 they're still required by law to provide services

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1 for these students, so that whatever other funds
2 they could have used before, they can still use.
3 And I don't think they could use Title I funds
4 previously to meet the requirement of the law.
5 I would also note that this provision
6 still remains in 1114, which is the schoolwide
7 program.
8 MS. POMPA: Thank you.
9 MS. PODZIBA: Liz?
10 MS. KING: Yeah, I just wanted to build
11 on Regina's question.
12 So the only LEAs that are subject to
13 the test, right, are LEA's that have both the
14 Title I and a non-Title I school within a grade
15 span?
16 So every LEA that's a single-school
17 LEA, or every LEA that is a single-school for
18 grade span, or every LEA that is all Title I, or
19 every LEA where maybe all the elementary schools
20 are Title I but none of the middle or high schools
21 are... all of those LEAs are not subject to a
22 test without the basic education program test,

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1 right?

2 MR. AMERIKANER: Right.

3 MS. PODZIBA: Alvin?

4 MR. WILBANKS: I just want to remind us

5 that when we talk about the district providing

6 whatever funds are necessary for a program in a

7 particular IDEA, we -- since the IDEA law has been

8 passed, I believe the most this would be

9 Congressional figures and Congress for the most

10 its ever funded by special ed is about twenty

11 percent. And in districts it doesn't even equate

12 to that. We can't find -- the most we've ever

13 found is about ten percent of special ed dollars

14 that come to the District.

15 So I think this is part of the

16 compounding concern that I think a number of us

17 have, particularly practitioners at the local

18 level and at the state level, and the state wants

19 to get whatever is required that you need to

20 provide. Sometimes you don't have it to provide,

21 and I think we need to keep that in mind.

22 And that's why I really think the

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1 average amount spent per-people, sometimes one
2 school can be explained that that can be one
3 thing, but it makes that a pretty heavy burden to
4 have.
5 So just a reminder that, just because
6 it is federal money that flows, it doesn't cover
7 costs. I think by anybody's estimate it's right
8 at twenty percent now, the most, of the real
9 costs.
10 MS. PODZIBA: Derrick?
11 MR. CHAU: I just wanted to
12 double-check to see and follow up on what Regina
13 asked before.
14 It was mentioned, but I'm not seeing it
15 here in the Regulations right now that if a
16 district is all Title I schools, I don't actually
17 see where that is -- I'm wondering if we've got
18 something that we might add to romanette -- I
19 guess it's romanette (ii) on the bottom of Page 5
20 somewhere, yeah, on the bottom of Page 5,
21 romanette (ii), where it says "An LEA with only a
22 single school, or a single-school and grade span

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1 for a district with all Title I schools"?

2 MS PODZIBA: Ary?

3 MR. AMERIKANER: Well, actually, I

4 would like to hear what other people have to say.

5 We would be open to discussion.

6 MS. KING: Yeah, Derrick, I mean, I

7 would be fine with adding the clarity. I would

8 rather put the basic educational test back in,

9 subject then to the requirement. But for the sake

10 of clarity, I would be fine.

11 I mean, listing the universe of LEAs,

12 because it's a broad universe of LEAs that are not

13 subject to the test, and listing the many LEAs --

14 I mean, an LEA could choose to be subject if they

15 wanted to do a whole district and not a grade-span

16 calculation, but I don't think a bunch of

17 districts are jumping at the chance to be subject

18 to the test.

19 MR. AMERIKANER: You would be able to

20 entertain an amount that says, for only Title 1

21 schools -- I don't know if I'm saying it right,

22 but something like, "or only Title I schools," or

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1 "only all Title I schools within a grade span,"
2 also just to make it clear that the whole -- yeah.
3 MS. KING: Well, but if you -- I would
4 do this with little "a's" or whatever.
5 MR. AMERIKANER: Yeah, that might work.
6 That's probably better.
7 MS. KING: Because any LEA with only
8 Title I schools, any LEA which does not have both
9 a Title I and a non-Title I school within a grade
10 span -- I'm now talking too fast again.
11 So I think, writing out the universe,
12 the full list --
13 MR. AMERIKANER: Yeah, we can format,
14 but I take your point. Yeah, that's fair.
15 MS. PODZIBA: So does that capture the
16 proposal?
17 Audrey?
18 MS. JACKSON: I have a clarifying
19 question about the term "Title I schools".
20 So the last one of our sessions, I know
21 Thomas referred to having more schools than they
22 had funding who might be eligible for Title I.

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1 I don't know if this is because it's
2 not my -- like I don't know about it that much,
3 but is there a distinction between Title I school
4 as receiving funds or simply eligible for funds
5 that would be a difference?
6 MR. AMERIKANER: That's a great
7 question. We definitely mean -- because there is
8 a distinction, right, between Title I-eligible and
9 Title I-receiving, and we definitely mean Title
10 I-receiving.
11 If people think it would be helpful to
12 clarify that here, we would be open to that
13 discussion.
14 MS. JACKSON: Wait, maybe I should --
15 if Thomas isn't concerned about it, that's fine,
16 but if you then have schools that are eligible,
17 you simply don't have enough funds to distribute,
18 and they're still really high poverty?
19 MR. AMERIKANER: Districts have a fair
20 bit of discretion in how they allocate their Title
21 I funds. So districts make different assessments
22 about whether, We're going to concentrate our

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1 Title I funds in our most high-poverty schools, or
2 We think actually we would be better off spending
3 our Title I funds over sort of the larger number
4 of our high-poverty schools, under current law,
5 and that hasn't changed.
6 So we think it's best that that's sort
7 of left with the district to continue making those
8 choices, but what we care about is that the
9 schools that are actually in this provision -- the
10 schools that are actually receiving the money are
11 using it for supplemental purposes.
12 MS. PODZIBA: Is there a further
13 discussion on the proposal?
14 Tony?
15 MR. EVERS: Some of this is redundant
16 from previous discussion. But first of all I want
17 to thank the Department for kind of dealing with
18 an issue. I know I was compelled to let go about
19 the basic educational program and exceptions
20 around weighted funding, and I think that's very
21 critical in our state. So that was very helpful.
22 But indeed, the bottom line here is

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1 that the school districts across the country will
2 be compelled to use the criteria of average cost,
3 and we for forty years have had that option. It
4 was rejected by Congress not too long ago, and I
5 think even Senator Bennett, when I testified at
6 the Bennett Subcommittee talked about his interest
7 in having that in there, and he said "I failed,"
8 so, you know, life goes on. But he wanted
9 everybody to know it was important to him.
10 So, kind of going back, I'm concerned
11 on what the effect of collective bargaining may
12 be, not so much in our state since we kind of did
13 away with that, but, the most important thing,
14 it's collective bargaining but it's also about
15 kids. I mean, supporting teachers, well, those
16 were the comments the first time. We talked about
17 this some time ago, and I know that's not the
18 Department's intent, but I can tell you that's
19 what's going to happen, either that or spend more
20 money in schools with local and federal funds, and
21 that's a wish, but there is no peace there.
22 So this piece would guarantee that.

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1 And you know selfishly, as a state superintendent,
2 when we get into making sure everybody is
3 compliant, the only way we're going to do it is to
4 monitor the salary of some sixty thousand teachers
5 in the state of Wisconsin that are involved in
6 potentially school district shuffling.
7 So, you know, I'm not trying to be an
8 obstructionist here, but the fact of the matter
9 is, it's still the bottom line. And I know that's
10 common. The regulation as we drafted it says
11 districts can do what they want. They can roll
12 dice if they want to.
13 But the bottom line is that when you
14 don't meet greater than or equal to average costs,
15 you're out of compliance, and that creates a
16 problem for us.
17 MS. PODZIBA: So --
18 MR. EVERS: So the question is, will
19 the Department ever agree to allowing school
20 districts to use an FTE method going forward?
21 I mean, that's kind of where we're at
22 here, and so maybe it's not fair to you as a

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1 facilitator for me to ask that question, but if
2 the answer is no, then we know.
3 MS. PODZIBA: So, just because I need
4 to keep some order, otherwise we'll just have a
5 conversation that doesn't have any focus to it,
6 I'm going to ask that -- I understand that there's
7 right now concern about other parts of this
8 proposal, but we do have a proposal on the table,
9 and I'd like to get a sense of the group.
10 Is there anyone who wants to speak
11 further to the proposal on the table? Are these
12 cards up for that?
13 MS. RICKER: Yeah.
14 MS. PODZIBA: Yes, Mary Cathryn.
15 MS. RICKER: Thank you.
16 I would like to recommend that we have
17 language in here, and I don't know if it's
18 somewhere, and I don't know -- under the
19 Exceptions where this can't violate a collective
20 bargaining agreement --
21 MS. PODZIBA: Wait, wait, wait, I'm
22 trying to get comments on Derrick's proposal.

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1 MS. RICKER: Oh. Sorry, Derrick.
2 MS. PODZIBA: So, any other comments on
3 Derrick's proposal? And then we'll take all the
4 other proposals.
5 Are there any dissents from adopting
6 Derrick's proposal for this item?
7 Ok, now we have another proposal.
8 Tony just put a new proposal on the
9 table which, Ary, maybe now you can respond to.
10 MR. AMERIKANER: I'm not sure if it was
11 a proposal exactly. Was it, Tony?
12 MR. EVERS: Well, I can make it into a
13 proposal to delete X, Y and Z, but before I even
14 have our great stenographer put it on here, it's
15 not working. So my question is no.
16 MR. AMERIKANER: So I think I would
17 answer the question with another question, which
18 is, we're trying to figure out how -- we are
19 trying to implement the letter of the law which
20 says that there needs to be a methodology about
21 allocating funds, but it's just -- it's not fair
22 to us how a methodology that was just FTEs with no

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1 fund-related tests is about a methodology for
2 allocating funds.
3 So I guess I don't think we are open to
4 that, unless you can -- we're truly -- it doesn't
5 feel like it is what the law requires.
6 Unless I'm missing something and
7 there's another way to come up with an FTE-based
8 allocation. I mean, certainly under our current
9 proposal, many districts could end up using an FTE
10 allocation method and then doing a back-end check
11 on the funds.
12 MR. EVERS: Correct, but the bottom
13 line is, if a district is not meeting greater than
14 or equal to average costs, they're not compliant.
15 As I said, they could use any
16 methodology. They could use the roll-the-dice
17 methodology, and they could do anything they want
18 to, but the bottom line is if they can't meet
19 that, they're out of luck.
20 My question is, I don't see any way --
21 I mean, I can make a proposal to eliminate a whole
22 bunch of stuff, but I don't think that would be

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1 productive.

2 MR. AMERIKANER: Do you have an

3 alternative way of getting at the -- is there a

4 different back-tracking or a different

5 funds-related -- like a way to tie it to the

6 allocation of funds in the law that you have

7 thought of?

8 MR. EVERS: I don't. Alvin might.

9 MS. PODZIBA: So I'm going to take this

10 as a proposal in concept before we take some

11 other.

12 Are these comments on the proposal in

13 concept?

14 Liz?

15 MS. KING: Yeah, I mean the basic

16 question is whether and why is it better for poor

17 children to spend less money on their education?

18 I just don't -- I mean, it may serve a lot of

19 other interests. I don't understand why it's

20 better proportionally to spend less money on

21 education.

22 I also will say that the test that the

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1 Department has put on the table is consistent with
2 the 2003 GOA report and the 2008 Guidance on
3 fiscal issues. So this is not some crazy new
4 scheme they came up with. It's consistent with
5 the way that S&S has been talked about. The way
6 that S&S has primarily been enforced is through an
7 individual services test. The law says now you
8 could look at services, and so now the options
9 that were funds based become more relevant.
10 I did have a proposal I wanted to put
11 on the table to strike this "meet to fail in two
12 out of four years," romanette (iii). So what is
13 that, (B) --
14 MS. PODZIBA: Could I just ask you to
15 hold off on that, just because it's a whole other
16 item.
17 Janel?
18 MS. GEORGE: Sure, I just wanted to
19 raise my concerns, voice my concerns about the
20 points that have been raised, and really my
21 overall concerns about this language.
22 Again, the purpose of this law is

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1 equity. Coming from the NAACP Legal Defense and
2 Educational Fund, the litigated Brown vs. Board of
3 Education, that's what that case was about, to
4 insure that we didn't have a caste system of
5 schools, inequitable schools.
6 And also, where we see concentrated
7 poverty, we often see correlated racial isolation
8 as well. And that's what these provisions are
9 designed to address and designed to mitigate.
10 Again the purpose of the law is equity.
11 Title I of the Civil Rights Act still applies for
12 violations of this kind. I think that complying
13 with this requirement also would insure compliance
14 with Title VI of the Civil Rights Act.
15 And I just want to flag a couple of
16 statistics. We know that where more than three
17 quarters of students are low income, they are also
18 three times more likely to have uncertified or
19 out-of-field educators. Again, I'm probably less
20 concerned -- and I'm coming from a perspective,
21 not as an administrator, school administrator,
22 admittedly -- I'm more concerned with equity than

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1 the discomfort of school administrators.

2 MS. PODZIBA: Thomas?

3 MR. AHART: I'm concerned about equity

4 too, and, believe it or not, I'm not super

5 concerned about my comfort, but my teachers would

6 probably tell a story that relates better than I.

7 I wonder, just to echo Tony's point, I

8 wonder if the Department could share what the

9 anticipated costs to follow this rule would be?

10 MR. AMERIKANER: So we talked a little

11 bit about this last time, and as I said last time

12 we think that in fact the basic requirement is the

13 allocation of funds, not about changing the amount

14 of funds.

15 So I think it's -- and I do not mean

16 this figuratively. I recognize that's not the

17 intent of your question -- but the basic

18 requirement is how you allocate your current

19 product money, not requiring new money to be

20 implemented.

21 I think your underlying point

22 politically, as I remember last time, was that

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1 there are various collective bargaining agreements
2 and other rules in place that say you can't do
3 that with your existing product money.
4 So, if you're asking, How much do you
5 think we need to move around or to be added with
6 new money, we don't have recent cost estimates.
7 I believe you guys I think have been
8 looking at the -- I think there was a 2011 study
9 that we did in a different context, and so, I
10 actually think it is -- we haven't brought it up
11 in the past because the numbers are based on a
12 different set of assumptions than these, but it's
13 the closest thing we have, and that closest thing
14 we have estimated I believe is between two and
15 four percent of the district's budget and would
16 need to be either moved or added to require -- to
17 insure that every Title 1 school got as much as
18 the average non-Title I school.
19 I will say, I want to just reiterate
20 the caveat here so every one knows: the reason we
21 haven't brought this up in the past and the reason
22 I don't want to hang too much of our weight on it

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1 is that the assumptions underlying that study were
2 different. For instance they compared, within a
3 district that have all Title 1 schools, they still
4 included them in the study and just compared their
5 lowest and highest poverty schools. And we know
6 that wouldn't be the case for this. So there are
7 some real differences.
8 But given that that's the best that we
9 have, that's my answer.
10 Does that help?
11 MR. AHART: No.
12 I do have one other question, to Tony's
13 point, to the proposal, or what he may have asked,
14 we talked about -- several of us talked about this
15 I think at the last session when we were
16 discussing Supplement Not Supplant and talking
17 about how many of us allocate FTEs with the
18 intention of giving our building-level leadership,
19 principals primarily, the ability to hire the best
20 people that they can for a given position.
21 So in my district, I may have -- in
22 fact I think of my elementaries, for instance,

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1 because I have a few dozen Title schools, that the
2 amount spent per people based on personnel, which
3 at the building level is around ninety percent of
4 the cost, could vary widely. But the
5 student/teacher ratio varies almost not at all.
6 And that variance is due to, as we talked before,
7 one school that may have a handful of very, very
8 reverent teachers that just stayed there for a
9 long time, and all the way down to some schools
10 who may have one-year teachers.
11 Is there a way, since we operationally
12 do this now, to -- to consider linking an FTE, a
13 teacher FTE in any way with an average cost to
14 meet the -- to meet and balance that amount, that
15 rule that says, Deal with the cost per people?
16 Because there's also language in the
17 statute that prohibits or that would seem to
18 prohibit the same test.
19 MS. PODZIBA: Ary, did you want to
20 respond?
21 MR. AMERIKANER: I'm happy to, or we
22 could hear other discussion about the proposal.

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1 I know you asked the question. Do you
2 want me to answer it or do you want it to be a
3 proposal for the group? I can go either way.
4 MS. PODZIBA: So perhaps, Thomas, could
5 you explain that a little more fully?
6 MR. AHART: Sure. So for instance, as
7 we built our budget -- actually we approved it,
8 but as we were building our budget for the next
9 year, for FY '17, we arrived at a cost per
10 teacher, and we get that cost by taking all of the
11 teachers that we have, adding up their costs,
12 which is not just salary, but salary and benefits,
13 which can vary significantly between two identical
14 people, and dividing it by the end.
15 So that, as we're figuring out how many
16 staff we can afford, we know pretty closely what
17 each FTE is going to cost, knowing that we have
18 many that are figured into that calculation.
19 So, if I have two teacher openings, as
20 a principal, I may hire one first-year teacher,
21 because that's the best person I can find for my
22 LMs, and I may hire a twenty-year veteran that's

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1 going to cost me thirty thousand dollars more
2 because that's the best person I can find.
3 But in terms of services provided to
4 kids, student/teacher ratios and so forth, it
5 gives me the best ability for my principals to
6 actively monitor the makeup of their staff to find
7 the best talent that they can, the most highly
8 qualified people that they can, and to have a
9 balanced composition in terms of the total team
10 that's supporting the students at that school.
11 I don't think that's unusual for how
12 districts pursue it. I think that, you know, that
13 I do appreciate that some schools don't have
14 highly qualified teachers. This doesn't fix that.
15 MS. GEORGE: I think it does. Can I
16 just ask you a quick question about what you just
17 described?
18 MR. AHART: Yeah, yeah.
19 MS. GEORGE: And I know you described
20 the cost and who would be the best fit. When
21 you're making -- and again I'm not a school
22 administrator, so I'm not familiar with that...

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1 When you're making that calculation, do
2 you also think about the distribution of your
3 teachers and those students, particularly students
4 of color or low-income students, and whether or
5 not they have access to more qualified and
6 certified in-field teachers as well in making that
7 calculation?
8 MR. AHART: Well, actually we don't
9 weight specifically for that --
10 MS. GEORGE: That's what this will do.
11 MS. PODZIBA: Let him finish.
12 MR. AHART: We don't have unqualified
13 teachers teaching out of field. We don't do that.
14 And it certainly doesn't have -- a principal has
15 to get through some pretty high groups in order
16 for us to approve somebody on some sort of a
17 temporary or emergency certification, and usually
18 the argument is because it's somebody who will
19 better diversify the teaching staff in that school
20 to match the population of the school.
21 But it's not --
22 MS. GEORGE: So those who are

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1 uncertified tend to be more diverse?
2 MR. AHART: No. What we struggle to
3 recruit -- in the middle of Iowa, we struggle to
4 recruit a teaching staff that reflects the makeup
5 of our student body. This is a very rare
6 instance. But this rule doesn't get to that in
7 any way, shape or form.
8 So, what I'm saying is that I would
9 have to severely crimp the liberty of my
10 principals to build the best staff in our schools
11 if I can do that. Because I'm going to have to
12 start saying, You have to hire somebody more
13 expensive; You have to hire somebody less
14 expensive, or I'm going to have to wait 'till
15 everybody's done and then start pulling them from
16 buildings and shuffling them around. And there's
17 just --
18 MS. PODZIBA: And so, Janel --
19 MR. AHART: And so there's just no two
20 ways around it.
21 MS. PODZIBA: Janel, if I understand
22 you correctly, your concern about Thomas' proposal

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1 is that it may lead to many uncertified teachers
2 in Title I schools? Is that the concern that
3 you're raising?
4 MS. GEORGE: No, that's not my concern.
5 My concern is the lack of taking into account the
6 distribution of qualified teachers to students
7 against students of color and low-income students
8 who tend to be taught by not fully certified,
9 experienced educators.
10 MS. PODZIBA: So is there a way -- and
11 this is hypothetical, right. No one has agreed to
12 this, but I think it's worth working this proposal
13 a little bit.
14 Would you have a modification to this
15 proposal that would incorporate that concern?
16 MR. AHART: Excuse me, could I just ask
17 for a clarification?
18 MS. PODZIBA: Yeah.
19 MR. AHART: I don't understand how it
20 gets to -- could you help me understand, how
21 highly-qualified --

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22 MS. GEORGE: How this gets to it?

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1 MR. AHART: Yeah.

2 MS. GEORGE: Oh, I'm sorry, I wasn't

3 referring to highly qualified. I don't think that

4 language is in here. I'm referring to the

5 language that low-income students are

6 disproportionately traditionally taught by

7 inexperienced educators.

8 MR. AHART: Oh, "inexperienced".

9 MS. PODZIBA: Ok, let's let Ary answer.

10 MR. AMERIKANER: Can I clarify. I

11 think there's two different points.

12 I think, Janel, tell me if I'm wrong,

13 that you're actually referring to a slightly

14 different provision of Title 1 which requires that

15 low-income students and students of color not be

16 taught at disproportionate rates by certain kinds

17 of teachers. Because it's a really important

18 provision that we care a lot about, but it's not

19 something that is directly being negotiated here.

20 MS. GEORGE: Yes.

21 MR. AMERIKANER: I take your point. I

22 think it's a really important one. But if you

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1 don't mind maybe we can leave that off for now.
2 MS. GEORGE: That's fine.
3 MR. AMERIKANER: Unless you think
4 there's something specific about this reg that
5 impacts --
6 MS. GEORGE: I think it could help
7 positively promote that, as well as Title VI of
8 the --
9 MR. AMERIKANER: No, no.
10 MS. GEORGE: Which we're also not
11 addressing.
12 MR. AMERIKANER: I understand the
13 context.
14 MS. PODZIBA: Let me get Alvin in the
15 conversation.
16 MR. WILBANKS: Thank you.
17 I'm sure everybody here has an opinion,
18 I know I do, and everybody has a right to that
19 opinion.
20 I think we're here to really look at
21 the law and try to revise or write the rules that
22 makes that limitation of it easier as it gets

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1 played out in the districts where we really carry
2 out the business of education. That's in the
3 classrooms and schools.
4 I believe the average -- the
5 requirement here that would cause us to have to do
6 the average amount, I don't believe that's in the
7 law. I believe this is overreach, and I think if
8 you go back and review some of the comments that
9 others have made, How can this be done, obviously,
10 it's actually more simpler than most people would
11 think. You want to give all of the schools money.
12 I believe that happens across this land. And then
13 the Title I schools get the Title I dollars.
14 Now, there are some funds set aside for
15 district administration, state administration, and
16 then when you start putting in a requirement like
17 this, you really get into the operational and the
18 mechanics of really carrying out a good
19 educational program in the district. And first of
20 all again, I think this is an overreach, and I
21 don't believe we have -- I don't believe that it
22 meets muster.

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1 I have no problem, folks, with giving
2 the Title I funds to Title I schools. That's what
3 it's for. Nobody needs to tell me what it's for.
4 I know what equity means. I know what a number of
5 things mean. But at the same time we sit here and
6 just talk about this as if this is in the law. It
7 is not in the law, and if so I challenge anybody
8 to show it to me.
9 It may be an interpretation of how you
10 are meeting something in the law, but I don't
11 believe this is actually something that we --
12 first of all, I'm pretty sure we shouldn't do it,
13 but I don't believe legally we can do it.
14 MS. PODZIBA: So I just want to make
15 some comments about what I think about our time
16 here this morning and however long we decide to
17 discuss this issue.
18 It's clear that there will be dissent
19 on the proposal that the Department has put
20 forward. It's clear that people are interpreting
21 the law differently, and I'm assuming, since the
22 Department has put this forward, that they intend

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1 to regulate in this area.

2 So we can spend our time now trying to

3 develop an alternative that may be more

4 acceptable -- that may be acceptable to everyone,

5 or we can really just call the question now and

6 not make an effort to do that, or we can have more

7 conversation that doesn't get us any closer to

8 developing a proposal but that let's everybody

9 continue to say things that I -- I think we've

10 all -- that have been said over the last two

11 meetings.

12 So I would like a sense of the group in

13 terms of, Is there a desire to try and build a

14 proposal that might meet with consensus?

15 MS. JAMES: Yeah.

16 MS. PODZIBA: Yeah. Ok, so I think if

17 we can focus on building a proposal, I think we

18 may get somewhere, maybe we won't, but at least

19 we'll give it our best shot.

20 Thomas has put a proposal on the table.

21 I don't know if that's the basis where we want to

22 start. I know Tony also wanted to start with

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1 FTEs. I don't know if the Civil Rights community
2 wants to engage on this proposal or if that's the
3 place where there may be potential for building
4 something that will work.
5 MS. GEORGE: I was just trying to
6 clarify what he means. I just wanted to clarify
7 what the proposal was.
8 MR. AHART: I can go through it. It
9 requires starting on Page 1 under Compliance, with
10 a few small tweaks in a few different areas, so
11 I'll try to take it step by step.
12 So under Compliance, romanette (i), to
13 comply with paragraph (A) of the section, "An LEA
14 must demonstrate at such time and in such manner
15 as the SEA agrees to require that the same
16 methodology is used to allocate state and local
17 funds to each Title I school and non-Title I
18 school," and then the rest of it stays the same.
19 And then under romanette (ii), "An LEA
20 may determine the methodology it will use to
21 allocate state and local funds to its schools,
22 such as a methodology that, (A)," which I think is

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1 Arabic A, in a parenthesis, "results in the LEA
2 spending an amount of state and local funds for
3 people in each Title I school that is equal to or
4 greater than the average amount spent per-people
5 in non-Title I schools as reported under section
6 1111(h)(i)(C)(x)" --
7 MR. AMERIKANER: She's flagging for
8 help.
9 MS. BRIGGS: Slow down.
10 MR. AHART: Sure.
11 MS. PODZIBA: Maybe the easiest thing,
12 do you have it written out?
13 MR. AHART: Yeah.
14 MS. PODZIBA: So maybe just send it
15 down.
16 MS. KING: Thomas, can I ask you a
17 question?
18 MR. AHART: Yes.
19 MS. KING: What's the difference
20 between the methodology or the test you're
21 proposing and the current law comparability test?
22 MR. AHART: There's two more that you

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1 will see.

2 MS. KING: Is that plus other things?

3 MR. AHART: Yes.

4 (Brief pause.)

5 MS. PODZIBA: Thomas, I'm just curious,

6 could you explain (vi), because I thought that one

7 of the critical points of your proposal was the

8 per-teacher -- or is that imbedded in that?

9 MS. JACKSON: It's (C).

10 MS. PODZIBA: Ok, so everyone

11 understands that, gets that?

12 MS. KING: Sorry, so what you're

13 proposing is that either you demonstrate

14 compliance with an actual expenditures test, or

15 you have a weighted student funding system, or --

16 and do you mean, when you say "full-time

17 equivalent staffing fund," I assume that you mean

18 a districtwide salary schedule, districtwide class

19 that --

20 MR. AHART: No, we have a districtwide

21 salary schedule. I'm talking about allocating

22 positions.

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1 MS. KING: Right. So what is the
2 difference between letter (C) and the current
3 comparability test? Right? Because the current
4 comparability test is that you have a districtwide
5 salary schedule, districtwide student/teacher
6 ratio and a method for allocating instructional
7 resources or whatever, right? That's what you're
8 saying?
9 Is that what you're sort of proposing
10 under (C), is that if you have those things --
11 which is essentially that you have the same class
12 size in each school and that --
13 MR. AHART: I'm saying there's
14 different ways to demonstrate how you're using
15 Title I dollars as actually supplementing and not
16 supplanting.
17 MS. KING: Ok, that's how -- I think I
18 understand it. But my concern -- my concern is I
19 don't believe that either (B) or (C) are evidence
20 of supplementing.
21 MR. AHART: I'm sorry?
22 MS. KING: I don't believe that (B) or

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1 (C) are evidence of supplementing, although I
2 think it is possible --
3 MR. AHART: I do.
4 MS. KING: Ok. I think it is
5 possible -- like with (B), if we could talk about
6 the proportion of district funds that went through
7 a weighted student system, and of the types of
8 weights involved, I would want -- because with (B)
9 you might have a weighted system that, for
10 example, weights on gifted and talented and only
11 accounts for thirty percent of district
12 expenditures, and therefore you might not be
13 compliant with either test (A) or test (C), and I
14 would consider that supplanting.
15 But let's do more questions, sorry.
16 MS. PODZIBA: Let's get other people in
17 the situation.
18 Ok, Mary Cathryn, you've been waiting a
19 while.
20 MS. RICKER: So I have a couple of like
21 other real examples.
22 I know there are a number of -- and I

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1 said this last time, there are a number of
2 districts where unions have successfully
3 negotiated using an average staff salary in their
4 school-based budgets, and that those historically
5 were then negotiated because of discrimination
6 against experienced staff, and that has really
7 helped.
8 Then some real-life examples, in
9 wanting to take Liz's concerns really seriously,
10 in St. Paul, a disproportionate number of schools
11 on the east side of St. Paul were closed, and the
12 east side of St. Paul experienced an incredibly
13 disproportionate number of foreclosures during the
14 2008 foreclosure crisis due to the issues that the
15 east side of St. Paul struggles with.
16 The community rose up. People were
17 angry about the disproportionate number of schools
18 that closed. The response from our school board
19 and our superintendent was to open a middle school
20 that was going to be a Montessori Magnet, and all
21 three Montessori schools would feed into that as
22 well as the neighborhood schools that were also

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1 allowed to feed into it. People were very excited
2 with this idea of having a new school and having
3 the investments.
4 And so the district chose that they
5 were going to only hire teachers for that
6 Montessori middle school that were already
7 Montessori trained or in the process of Montessori
8 training, rather than, in sort of a missed
9 scenario as it has played out, looking to middle
10 school teachers in the district who had no
11 Montessori training in saying, You will not be
12 allowed back to your middle school next year; you
13 will be transferred to this Montessori School and
14 you will need to begin teaching in a Montessori
15 fashion starting in August. And that is a
16 situation for virtually every teacher in that
17 school.
18 The way our school districts did this
19 hiring, in putting the seniority on Montessori
20 teachers who were either in training or had their
21 own training, a disproportionate number of them
22 were early-career teachers and therefore on a

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1 salary schedule and it showed they made less than
2 experienced teachers.
3 So, that is a scenario where there is a
4 very direct response to a community need that was
5 met with the integrity of a program the district
6 said it was going to offer -- and I could offer
7 several examples separate to that one -- as an
8 example of something that would be incredibly
9 difficult if not impossible to do if they had to
10 open up as a Title 1 school even though they were
11 showing they were expending an equal number of
12 dollars as every other in the district.
13 I still have a question about
14 collective bargaining, but we can come back to
15 that.
16 MS. PODZIBA: Marcus?
17 MR. CHEEKS: From the perspective of a
18 state agency having to implement and verify
19 compliance with some of these components, I think
20 we're tracking back around to the basic
21 educational program piece in order for us to be
22 able to see the equivalency for staffing formula.

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1 And I'm wondering if, without going completely
2 back to that point, how would we kind of verify
3 that level of equivalency if there was a way to
4 somehow determine a floor, somehow determine a
5 standard of expectations if you're using that
6 particular staffing formula?
7 Because I think at the end of the day,
8 somewhere we have to find a way to be able to
9 determine the teachers that are being counted in
10 this staffing formula where we're putting teachers
11 in that particular position to reach a certain
12 standard with the children that are being taught
13 by those teachers.
14 And that's why I've been listening and
15 trying to hear from the teacher unit approach,
16 that at the end of the day we're funding teachers
17 in a particular school to accomplish A, B or C.
18 So maybe under this particular approach
19 if there was a way to determine what that ultimate
20 floor is, because I think at the end of the day we
21 have to be able to show where the title dollar
22 basically begins and the state dollar would

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1 locally end -- essentially end.

2 So, it may be in having that thought --

3 because I'm thinking from the lens of tying to

4 verify this, and personally, you know, in my

5 state, as high as the poverty is, there would be

6 various districts that would fall into the

7 category where they would be out of compliance

8 with this.

9 But my interest is from my colleagues

10 from the Title I association that may be in a

11 situation such as Illinois or Florida where they

12 look at funding at a certain level of expectations

13 for those particular schools. And I think

14 specifically, when I'm remembering Florida's

15 funding process, they fund schools at a certain

16 level, and not expecting all schools to operate at

17 an A status, but they fund those schools I want to

18 say at the mid-range of a C status.

19 Now that may not sound appropriate when

20 you're setting up children for an average status,

21 but the bottom line is we end up with some type of

22 a threshold for saying, Here is what we're trying

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1 to accomplish in all schools. And at the end of
2 the day, since all schools are receiving this
3 level of support, then the Title dollar is adding
4 to that level of support from that starting point.
5 So I'm just wondering, Thomas, if we
6 could -- and I'm not sure of the thinking behind
7 that, but that may be a place of conversation to
8 help push this element forward.
9 MS. PODZIBA: Thank you. I'm going to
10 get some more voices in and we'll see if other --
11 So, I think the question on the table
12 is, Is there a way to have full-time equivalence?
13 Is there a way to modify this that gets at what
14 everybody wants at the table?
15 Ok. Rita, you were next.
16 MS. AHRENS: Sure. I just want to
17 comment first that -- and I will speak to the
18 full-time equivalent piece, but changing it the
19 way Thomas proposed would mean that either test A
20 or B or C or some other D could be done, and I'm
21 not -- I'm uncomfortable with A being put as an
22 "or". I think it should be A "and" B, C or D,

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1 because I think we have to have some sort of
2 expenditure test. I don't care whether it's done
3 through, you know, weighted student allocation or
4 FTEs if we still have that expenditure test tied
5 to it.
6 But going to the full-time
7 equivalent -- and the reason why -- I'll explain
8 why I'm uncomfortable with it. Because if you
9 just use a full-time equivalent staffing formula,
10 you know, understanding what you said about
11 averaging out the teacher salaries, I'm really
12 concerned that it would result in the masking of
13 hiring inexperienced teachers at the high-poverty
14 high-need schools, because we know that this is
15 what happens right now, and we know that there is
16 a real lack of equitable distribution of
17 experienced and effective teachers.
18 And so, I'm wondering, like, with the
19 FTE thing, if we really want to have it in, can we
20 put some guardrails in place so that, you know,
21 recognizing that we tend to have more
22 inexperienced teachers going to our high-poverty

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1 schools, that we define, as Marcus said, how many
2 teachers we need to have to additionally support
3 Title I schools.
4 So whether that's additional support
5 staff, paraprofessionals. You know, what
6 additional staff do we need to support
7 English-language learners and students with
8 disabilities so that we are getting more teachers
9 at the Title I school recognizing that there are
10 more needs there.
11 MS. PODZIBA: Rita, I think that's
12 exactly the framing of the question on the table
13 is, How is this a possible proposal so that -- How
14 can that be framed regarding the problem of having
15 lower-salary teachers winding up at Title I
16 schools? I think that's exactly the question that
17 we're all working with.
18 So let's get some other people.
19 Ron?
20 MR. HAGER: Yeah, I guess actually I
21 reiterate what Rita said about that, you know, the
22 statute does say that the district must

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1 demonstrate how their funds are being allocated so
2 that the funds they would otherwise receive -- so
3 that the statute itself requires this provision in
4 looking at the funds.
5 So, if we wanted to try and add in the
6 weighted funding staffing formula or other
7 formulas, you still have to use that -- so I would
8 agree with Rita that you still need that "and" and
9 not an "or". So you would have the first one and
10 then "and".
11 And then if there is a way -- I mean,
12 the bottom line for us is that we still would be
13 looking at expenditures of funds and how the funds
14 are actually -- the basic is, here's our floor in
15 non-Title I schools and we're getting -- the Title
16 I schools are getting more funds. That's how we
17 read the statute, and that's I think how the
18 Department is reading the statute. And there may
19 be ways to look at the idea of the FTE and
20 weighted formulas, but we want to make sure that
21 we're adding resources to non-Title I -- to Title
22 I schools.

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1 MS. PODZIBA: Aqueelha.

2 MS. JAMES: I just want to respond back

3 to the notion that somehow school districts are

4 intentionally hiring less-experienced personnel to

5 service students who are underrepresented -- well,

6 I should say, whose demographics bucket is in

7 either low socioeconomic status or ELLs or what

8 have you.

9 I really want to be very clear that it

10 is a luxury as a school principal to have autonomy

11 to select staff, regardless of their years of

12 experience, but because of their skills and

13 capacity.

14 And so when I hear folks who are not in

15 that position to hire such candidates, I do

16 question and wonder what your experience has been.

17 For me at the teacher level, at the

18 assistant principal level, at the principal level,

19 I have been very fortunate to work with

20 like-minded folks who intentionally want to work

21 with certain demographics. And I think that when

22 we consider the proposal, we have to be very

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1 thoughtful about not taking our own thoughts
2 around representation of one particular or
3 particular groups and look at it in a very
4 holistic way.
5 Honestly, the proposal that's on the
6 table, it was asked of us if we wanted to continue
7 with this process in coming about with consensus.
8 So there was the majority of us that said, Yes.
9 There was a group of individuals that said, What
10 is the proposal?
11 Now that the proposal is on the table,
12 I would like that group to speak to if they're
13 still interested in reaching consensus. Because
14 if they're not, then I'm not sure how beneficial
15 it is to continue with this conversation.
16 But I have to make sure that we're
17 clear when we talk about school principals having
18 the luxury of hiring folks that have high
19 capacity, regardless of their years of experience,
20 and regardless of the students that enter the
21 building.
22 It doesn't matter to me as a school

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1 principal what the child's socioeconomic status
2 is, nor does it matter to me their learning
3 profile. What compels me is, at the end of the
4 day, teachers and my staff, including me, we
5 impact the lives of young people with equity at
6 heart.
7 So can we go back to address, if the
8 group that wanted to hear about the proposal, is
9 still interested in reaching consensus?
10 MS. PODZIBA: I guess I'll just broadly
11 ask the question, Is there a sense of the group
12 that we should continue working towards consensus
13 and continue to work to modify the proposal that
14 is on the table in order to get there?
15 MS. RICKER: Yes.
16 MS. PODZIBA: Is everyone committed to
17 trying to do this in a way that --
18 MS. POMPA: Yes.
19 MS. PODZIBA: I mean, I think your
20 question, Aqueelha, is in a way that will satisfy
21 everyone around the table. We don't know if we
22 can do it, but if we don't try we know we can't do

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1 it.

2 I think if I'm taking your point

3 correctly, and correct me if I'm wrong, please, is

4 that you all need to start listening to each other

5 and have everyone hearing what everyone else is

6 saying and working the proposal in a way that

7 modifies it to bring it closer to a consensus.

8 Is that a fair characterization?

9 MS. JAMES: Yes, it is. I believe it

10 is. But there was a specific group that asked

11 for, you know, let's see the proposal before the

12 response of, I'm willing to agree. And so if that

13 group can say, Yes, we're willing to participate,

14 that would be super helpful.

15 MS. PODZIBA: Which group?

16 MS. JAMES: That was, I believe it

17 was -- I can't see her face -- -- yes, ma'am.

18 MS. KING: Janel or me?

19 MS. JAMES: Janel. Janel, you asked

20 for Thomas to give you the proposal. The proposal

21 was written on the board. Can we now speak to if

22 the Civil Rights group -- excuse me for just

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1 pointing to you, but it was clear to me --

2 MS. GEORGE: Yeah, we're having that

3 discussion now.

4 MS. PODZIBA: Discussing the proposal?

5 MS. GEORGE: Yeah, we're discussing --

6 MS. JAMES: So they are willing. So my

7 understanding is that we are willing to have and

8 reach consensus based on what you just said.

9 MS. GEORGE: Well, we're having this

10 discussion.

11 MS. PODZIBA: But not the proposal as

12 written. We need to modify it.

13 MS. GEORGE: We've been voicing our

14 specific concerns and having a discussion about

15 the proposal.

16 MS. PODZIBA: Ok. I think the question

17 on the table is still how to modify, at least for

18 now, item (C), ok, because I think that's the one

19 that is -- sounds, if I'm thinking about everyone

20 around the table, that sounds like it's of

21 interest to many people around the table, and also

22 that it's concerning to many people at the table.

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1 So do people have ideas about how to
2 accomplish their -- I think there are competing --
3 they're not competing, but there are interests,
4 but it's hard to come up with a proposal that
5 satisfies them both, which is, one is to insure
6 high-quality staffing, principal selection of that
7 staffing, and not have teachers moved from school
8 to school.
9 Is that what we're trying to do here?
10 Ok. Anyone have ideas for how to
11 modify that?
12 Audrey?
13 MS. JACKSON: So the teacher in me is
14 thinking about how we're looking at this with in
15 many case as "equal" meaning "equity", and that's
16 not the case. So, I'm trying to wrestle with
17 compromise here, which I normally do with ten- and
18 eleven-year-olds. But I think that the main issue
19 is the outcome, right? Like, it's a matter of a
20 clear process of inequitable allocation of funds
21 over time. That's been documented. No one here
22 alleges that anybody at the table is personally

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1 responsible for doing that, but there is a clear
2 trend in the data in practices.
3 Everyone here is invested in that not
4 happening, right? And we're trying to think of
5 the ways to do that that do not disrupt the
6 autonomies that should be protected and valued,
7 the practices that are happening in children, but
8 also don't just let status quo go on forever and
9 ever.
10 I'm wondering, and this is a place
11 where I'm guessing it's beyond the scope of the
12 law, although I've been trying to watch the
13 hearings and buy wiggle room, is that if you are
14 going with the full-time equivalent staffing
15 formula, and there is a way to connect it to prove
16 an outcome, so like, you know, These are the ways
17 that we are closing achievement gaps to go back to
18 older language from NCLB, or, These are the ways
19 in which, you know, so that that lends equity in
20 terms of outcome, not that we're just throwing
21 dollars at them and saying, We gave it to them.
22 So for example, at my school, in Boston

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1 public schools, we're all required to have a
2 certified PE teacher. This is the difference, in
3 my head, between people's intent with policy and
4 the reality on the ground. So we have to spend
5 twenty something thousand dollars a year for a
6 one-day-a-week PE teacher that can't even serve
7 all of our grades, and then have other service
8 providers. And it's just a big hot mess.
9 So I only mention that because every
10 kid, every class, every school, every district
11 doesn't need the exact same thing, like what you
12 were saying, you were talking about autonomy. But
13 we all want the same outcome, which is success for
14 all the kids to thrive. So you don't need the
15 same intervention necessarily, but we desire the
16 same outcome.
17 I imagine that's it's really best to
18 tie, or perhaps it's inappropriate, the outcome
19 for the FTE option. But in my head that is one
20 way perhaps, if you're proving that you're meeting
21 the needs for your kids, if you're providing what
22 those kids needs, then the issue of teacher pay is

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1 perhaps not as big of a deal.

2 MS. PODZIBA: Kerri?

3 MS. BRIGGS: I maybe have another

4 proposal that you might call the like slimmed-down

5 version, because I'm listening and wrestling with

6 the issues around the problem that you people are

7 trying to solve. Like we don't need this language

8 because it necessarily lacks... and then I'm also

9 struggling with funds that are disconnected with

10 people, because personnel are people. They're not

11 just sort of floating out there. Connect them to

12 someone.

13 So one deal is, instead of the

14 paragraph that talks about Results, I guess it

15 would be completely separate from Thomas' --

16 MS. PODZIBA: And so?

17 MS. BRIGGS: If that addresses a

18 different thing.

19 It's just an idea that I've been

20 wrestling with in my head. So you would leave in

21 romanette (ii) I believe, and that capital letter

22 (A) thing would basically just say that "the

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1 methodology considered information reported in
2 section 1111(C)(x)."
3 MS. BECKER: Can you say that again.
4 MS. BRIGGS: Basically, romanette (ii)
5 says "An LEA may determine the methodology such as
6 methodology that allocates resources through staff
7 positions".
8 I just thought earlier, you guys have
9 already conceded that you're ok with the
10 allocation. You're prohibited from specifying the
11 methodology or methodologies that allocate a
12 weighted student formula provided that the
13 methodology, and I mean this for either, considers
14 the information reported under Section 1111
15 (H)(1)(C)(x).
16 MS. JACKSON: Which is that?
17 MS. BRIGGS: (1)(C)(x) is the language
18 that talks about -- it's the reporting data which
19 is impressive with its specificity.
20 I'm not even sure it's possible to
21 think about this, because I look at that reporting
22 data and I think it's kind of tricky, "having been

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1 in the state before".

2 It's on Page 48 of the statute, just so

3 everybody's with me. It's basically "the state,"

4 and I think this also applies to the legal, "state

5 per-people expenditures of state and local funds,

6 including in addition personnel expenditures,"

7 blah, blah, blah.

8 So I was just basically trying to sort

9 of say that instead of requiring a particular

10 result that -- people behind me are all ready

11 moving to --

12 Instead of requiring a particular

13 result, which is what capital letter (A) does

14 right now, that whatever methodologies the LEA

15 decides to use, as it appropriately can, that they

16 consider that information.

17 I don't know if it's like --

18 MS. JACKSON: Don't delete anything

19 yet.

20 MS. PODZIBA: Conceptually, do people

21 have questions about Kerri's proposal?

22 Marcus?

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1 MR. CHEEKS: My question is still
2 tracking behind Thomas and really I think the
3 notion of trying to determine I guess expected
4 outcomes.
5 Alvin mentioned -- and he just walked
6 out of the room. He mentioned in an earlier
7 conversation about a weighted process, a number
8 system that they were using in his district to
9 determine funding for schools, and I'm wondering
10 if something of that nature -- it's not so much
11 picking up the weighted or the number system, but
12 an option where the district could explain the
13 means in which they're getting to determining
14 where they're starting with funding -- where
15 they're ultimately insuring that all funds are --
16 I'm not speaking into the mic -- where they're
17 insuring all funds are actually getting to schools
18 in an equitable manner, absent the Title dollar,
19 and I'm just wondering if they're explaining
20 either from the standpoint of outcomes, explaining
21 from the standpoint of initial conversation prior
22 to awarding dollars to school districts, if some

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1 caveat could be added for that type of
2 explanation, then maybe we would still be able to
3 find that floor.
4 Because I think ultimately we're still
5 going to have to find where the Title dollar
6 begins and the state and local dollar ends. And
7 that's just a thought.
8 MS. PODZIBA: Thanks.
9 Ary?
10 MR. AMERIKANER: Well, I was just
11 making a face. I was trying to learn actually,
12 how would that look? Can you say a little bit
13 more, Marcus, about what that would look like? At
14 the state level, what would you be checking for?
15 MR. CHEEKS: So let's say for example
16 if we were following... Avery's?
17 MS. JACKSON: Audrey.
18 MR. CHEEKS: Audrey's, I'm sorry,
19 Audrey's notion of outcomes, and maybe my largest
20 or second largest urban district in the state is,
21 as they are, wrestling with trying to determine
22 funding going to Title schools in conjunction with

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1 their state and local dollars. This is a very
2 affluent area, so, poverty is not very high, but
3 they do have pockets of poverty.
4 So, if that particular school district
5 was defining for the state their process of
6 determining, This is where we're starting with in
7 terms of -- I don't know, how we could provide
8 the -- This is where we'll insure that each school
9 is meeting the same -- I should have thought about
10 this last night.
11 MR. AHART: Threshold?
12 MR. CHEEKS: "Threshold for" I guess --
13 not so much staffing, but I guess "instructional
14 support there, all children will work toward
15 meeting a particular standard, they're spelling
16 out that standard; maybe if they were lumping in
17 the efforts around professional development, the
18 efforts that they're conducting in terms of maybe
19 assigning staff based on the need of those
20 particular schools; if they spelled out to us
21 their efforts in looking at academic achievement
22 in those particular schools, and how now they're

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1 looking at those areas and determining, This is
2 where our ultimate -- and I don't want to use the
3 term "level funding" but our ultimate basic
4 funding is for all children, This is basically
5 our -- and it's almost back-dooring into a needs
6 assessment, but without turning it into a needs
7 assessment, but if the district could somehow
8 spell out to the state their rationale and their
9 thinking in terms of supporting all schools at a
10 particular level, then that would be a more
11 plausible argument to say, Ok, once we arrive at
12 that particular level, then we decide to add the
13 Title dollar in these particular schools for these
14 particular factors.
15 And of course it's going to be your
16 higher-poverty schools, because ultimately those
17 schools will, by virtue of probably their academic
18 standing, have a greater need than your general
19 average threshold with schools.
20 MS. PODZIBA: Ary?
21 MR. AMERIKANER: So I'm sorry, I
22 thought -- I was just keeping track. Can I ask

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1 both a question and then make a comment? Is that
2 fair?
3 So, Aqueelha, I wanted to follow up on
4 your comments and ask you a follow-up question. I
5 think you were really kind of thinking about
6 principals, that it is a luxury to be able to hire
7 the right person for your school, and I wanted to
8 just make sure I was understanding the point.
9 So I had a question. Shouldn't
10 principals of Title I schools within a district
11 have as much money to use to attract the best
12 teachers they can, whether that's through higher
13 salaries, or whether that's through better working
14 conditions, or whether that's through additional
15 mentors and teachers and supports or additional
16 wraparound services for kids?
17 I think that what we're trying to
18 achieve here is make sure that Title I principals
19 have at least the same sort of tools, like a tool
20 belt, the same money, to attract the best talent
21 they can as their non-Title I sort of competitors
22 in the same local waiver market.

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1 Does that make sense? Do you agree
2 with that?
3 MS. JAMES: One hundred percent, and as
4 a Title I principal of two schools.
5 MR. AMERIKANER: Do you agree with
6 that?
7 MS. JAMES: Absolutely. And to be
8 quite honest with you, I do receive more funding
9 than non-Title I schools, which is the point,
10 right?
11 MR. AMERIKANER: Right.
12 MS. JAMES: So, it is a luxury. So the
13 luxury is that it's not broken. So let's not put
14 additional guardrails to tweak it or to have the
15 potential absent.
16 MR. AMERIKANER: In your school
17 district?
18 MS. JAMES: Absolutely, in my school
19 district.
20 And even when I think about my resident
21 district, which I live in Maryland, in Prince
22 Georges County, specifically, I'm thinking in

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1 terms of "we" as my children attending a non-Title
2 I school, and as a parent, I pay an additional
3 amount of funds in comparison for funds for my
4 students, my children to participate in different
5 activities.
6 My children are also exposed to
7 teachers who, in my opinion, are not highly
8 qualified, in comparison to Title I schools in PG
9 County who their teachers, I think they seem to be
10 more qualified.
11 So I'm not really sure. I'm a parent
12 as well as a principal. So working in the
13 district where I am the principal of a Title I
14 school, I really feel like we have more resources
15 than my wonderful school that my children attend,
16 but when I think about my sister's children, and
17 my nieces and nephews who attend a Title I school,
18 they have very similar luxuries as the students
19 that I serve.
20 MR. AMERIKANER: Thanks, that's
21 helpful.
22 And I would just point out that I think

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1 there's cross-district boundary differences there
2 that I agree with you are very real and hard to
3 solve, but unfortunately not sort of the -- this
4 is about within a district, how do we insure that
5 Title I schools have at least as much equity in
6 terms of local funding to fund the best schools as
7 much as something.
8 MS. JAMES: May I add something?
9 MR. AMERIKANER: Oh, sorry, yeah.
10 MS. JAMES: When I look back at this
11 proposal, I think about the proposal that Thomas
12 put on the board and that it really does allow
13 multiple districts the opportunity to put
14 themselves back in that position of hiring and
15 attracting highly-qualified folks.
16 And so, when I think specifically about
17 the weighted student allocation, I'm excited
18 because that's something that my district uses.
19 But when I think about other districts that
20 utilize or need to utilize a full-time equivalent
21 staffing formula, I'm optimistic as well.
22 So I'm just wondering if that is the

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1 one thing that's in question, and maybe we should
2 have a little bit more conversation around the
3 full-time equivalent staffing model.
4 MR. AMERIKANER: I agree. That's just
5 what I was going to say.
6 I want to express a little bit of
7 concern, I want to move us forward, but just to
8 get back to Thomas' proposal on the page, I am
9 honestly not sure how the "or uses a full-time
10 equivalent staffing formula" gets to the statutory
11 compliance requirement.
12 I'm just looking back at the printout
13 of our statute, like our language on Page 74. It
14 says that, for Compliance, "To demonstrate
15 compliance a district shall demonstrate that the
16 methodology used to allocate state and local funds
17 to each school receiving assistance from the
18 district insures that each state receive all of
19 the state and local funds it would otherwise
20 receive if it were not receiving assistance under
21 this part".
22 I'm just not sure how a full-time

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1 staffing equivalent would get to that, because
2 even that's what's used in comparability, as we've
3 all pointed out.
4 MR. AHART: Could I address that?
5 MR. AMERIKANER: Yes.
6 MS. PODZIBA: Yes, you're next, yes.
7 MR. AHART: I want to clarify one
8 thing.
9 We often talk, and that's why I wrote
10 it this way, because a weighted student
11 allocation formula and a full-time equivalent
12 staffing formula are not necessarily unique. For
13 instance, in my district, we weight. We weight
14 students. So poverty gets additional weighting.
15 ELLs get additional weighting. We handle the
16 special education situation a little bit
17 differently because of the funding source. So
18 even our non-Title high-poverty schools, or
19 high-ELL schools, which are often one in the same,
20 get additional resources than if they weren't.
21 And then that generates an FTE, so that it's tied
22 to a like FTE formula.

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1 And to your point, Marcus, about -- I
2 could clearly illustrate in my district two
3 elementary schools of the same size that are
4 pre-Title I or that staff differently because of
5 that weighted formula. Because they're pre-Title,
6 there's always some additional resources going
7 there, and I can spell that out very explicitly
8 and then say, Here is what -- Here is how Title
9 supplements go above and beyond that. I mean,
10 that's I think a lot of places could do that quite
11 well, one point.
12 So in terms of distributing funds --
13 and this is where I think that this might be kind
14 of at the heart of the issue here -- so it says,
15 "To demonstrate compliance with paragraph (1), a
16 local educational agency shall demonstrate the
17 methodology used to allocate state and local funds
18 for each school receiving assistance under this
19 part and insures that the school receives all of
20 the state and local funds it would otherwise
21 receive if it were not receiving assistance under
22 this part". We can do that.

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1 If we put all of our -- for instance,
2 if I lay out all the schools in the district, and
3 that's by level, because there's different
4 requirements at different levels of elementary
5 schools, I can tell you, pre-Title I, this is how
6 many staff are going be assigned to each of these
7 buildings based on the size of the building and
8 the characteristics, the collective student
9 characteristics in that building.
10 Now, depending on, you know, say
11 Aqueelha's one of my principals, and Lara's
12 another one of my principals. They may have
13 different preferences, different styles, different
14 needs and different buildings. So I can't tell
15 you exactly how much Aqueelha's going to spend on
16 her twenty-five teachers and how much Lara's going
17 to spend on her twenty-five teachers. But that's
18 how I'm distributing my funds.
19 We create a budget at the district
20 level that has to work for the entire district.
21 So that's how we distribute funds, but we can't
22 demonstrate how they are each treated equitably --

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1 MS. PODZIBA: But Thomas, could I
2 just --
3 MR. AHART: I think in terms of --
4 MS. PODZIBA: Hang on, because there's
5 a discrepancy here. What you just described, that
6 the FTE staffing formula works because you have a
7 weighted funding formula, but here you have an
8 "or," so I'm not understanding how the -- that was
9 the point.
10 MR. AHART: I'm just saying that
11 there's more than one way to skin a cat. I know
12 that we have a way that seems to work pretty well.
13 MS. PODZIBA: Here's I think the point
14 that Ary was trying to make, and I don't think
15 there's disagreement. I think there is a little
16 confusion.
17 If I understand your proposal, Thomas,
18 it's that you would come up with the amount of
19 funds that were connected to the average teacher
20 salary. Is that right? So it is funds --
21 MR. AHART: Right.
22 MS. PODZIBA: As opposed to numbers of

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1 teachers.

2 MR. AHART: Right.

3 MS. PODZIBA: So, Ary, I think you're

4 hearing it's the number of teachers, and I think

5 Thomas is saying it's the funds associated with

6 the average cost per teacher. So it is funds.

7 MR. AHART: Right. And they're going

8 to be different and they're going to vary year to

9 year.

10 MS. PODZIBA: Right, but I just wanted

11 to see if that was helpful.

12 MR. AHART: I didn't want to use the

13 term sort of "monetizing".

14 MS. PODZIBA: But that's what Ary is

15 saying, that the law requires it to be funds.

16 That's the confusion.

17 MR. AHART: Yeah, but it doesn't say --

18 MS. PODZIBA: Could I just check in

19 with Ary and see if that's a helpful

20 clarification.

21 MR. AMERIKANER: It is a helpful

22 clarification. I think by looking at the model,

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1 you're not saying what every Title I school gets
2 in terms of the funding.
3 MS. PODZIBA: I want to get rid of that
4 it's not funds. So the question is is there a way
5 to --
6 MR. AMERIKANER: So I think it could be
7 either one, and I think you're right, Susan, that
8 right now, as it's written, it uses a full-time
9 equivalent staffing formula. So that is about
10 people and not about funds.
11 But I think you're right that the point
12 I think Thomas would be ok with changing to say
13 some version of like "insures that an LEA is
14 spending an average amount of teacher salary in
15 each school," but that to me wouldn't -- it would
16 solve one of the problems.
17 MS. PODZIBA: Right, but we can only
18 solve one problem at a time.
19 MR. AMERIKANER: Ok, yes, yes.
20 MS. PODZIBA: If we could just look at
21 the question in terms of, so now we know that it
22 can be translated into funds.

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1 MS. KING: No.
2 MS. PODZIBA: I'm not saying it's --
3 can I just finish a sentence?
4 MS. KING: Yeah.
5 MS. PODZIBA: Ok. I'm going to
6 translate it into funds and then we can begin to
7 think of how to work that element so that it
8 accomplishes the goals that we've all been saying
9 everybody around the table wants.
10 MR. AHART: Can I make one quick
11 comment and then I promise I'll shut up?
12 MS. PODZIBA: Ok.
13 MR. AHART: If the goal of tying the
14 exact amount of money spent on personnel average
15 per student is to avoid having worthy teachers in
16 Title I schools, then let's just add "no first- or
17 second-year teachers are allowed to teach in Title
18 I schools".
19 MS. PODZIBA: I think that you've
20 identified the problem, but I'm not sure if people
21 think that's the solution. But we need to come up
22 with a different solution.

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1 So, here's what I'm going to do. I'm
2 going to take the last comments that are up and
3 then we're going to take a break, and then what
4 probably would make sense is to go to Assessments
5 and then hopefully there can be a lot of
6 discussions during the break and after lunch. But
7 maybe not.
8 We'll take a break and then see what
9 we're going to do next.
10 Ok, I've got Liz, Lara you're up --
11 Liz, Ron and then Alvin, and then we'll take a
12 break.
13 Liz.
14 MS. KING: Ok. So first of all, not
15 everyone would fail. I mean, even in that 2011
16 report, it is true that most Title I districts had
17 at least one Title I school with a per-people
18 expenditure below the district average for
19 non-Title I schools. But it was only -- I mean,
20 it was above a majority, but it was certainly not
21 all.
22 So I would be -- the goal here is not

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1 that anyone fails. That doesn't serve children.
2 So I'm glad the DCPS would be ok in doing the
3 right thing and spending more money on poor
4 children, and for everybody else that would be ok.
5 That's fabulous.
6 The goal is not to disrupt anyone who
7 is doing the right thing in investing more in
8 higher-need children to achieve equity. So just
9 to sort of put that on the table.
10 In the context -- sorry, Mary Cathryn,
11 going back several rounds to the Montessori
12 example, the idea here is that if the decision is
13 to hire, intentionally hire a concentration of
14 novice teachers, you should then have extra money
15 with which to provide your Montessori training, or
16 to lower your class size, or provide other people
17 support personnel to provide in-the-aggregate
18 expenditures, which provide an educational program
19 which is equitable.
20 And so, I totally agree, managing
21 staffing from the perspective of a federal
22 regulation is a terrible idea, and so that

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1 school-level flexibility is fine, as long as
2 everybody gets to play the same game by the same
3 rules with the same resources.
4 So that's the piece I wanted to say on
5 that.
6 I do not consider this FTE situation to
7 be a funds test, because I don't think an average
8 is the same as an actual, and I don't think 75
9 thousand dollars is the same thing as 50 thousand
10 dollars. But, I do appreciate the effort to offer
11 a proposal, and I think that deserves
12 consideration.
13 So, the things I would want to add to
14 this, and I think the funds piece within the law
15 is limiting what needs to be taken into
16 consideration, but I think it's worth talking
17 about this.
18 And so the things that I would want to
19 make sure that we add, and I can't figure out the
20 right way to do this in actual language, assuming
21 that there's an agreement in concept with, you
22 know, sort of as we did yesterday, with the caveat

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1 that I'm not sure that this would work overall,
2 but I think you would need to be clear that these
3 are FTEs funded through state and legal sources,
4 that you are talking about filled positions, not
5 vacancies, because that's one of the problems
6 that's happened in the past, is that you achieve
7 equity through a vacancy, which is not an actual
8 hire. And then all staff, maybe school-level
9 staff would be assigned to schools or allocation
10 schools based on this formula.
11 So it would have to be a hundred
12 percent of staff, because if you sort of had an
13 end-running situation, and outside of this FTE
14 system, then you would have a problem.
15 I still am deeply uncomfortable because
16 I don't -- I thinks it is irresponsible to ignore
17 differences in salary. But I think that if we are
18 going to go this direction, which I understand the
19 value of this, then those were the caveats I would
20 raise.
21 I would also just generally flag,
22 there's been a lot of talk about disruption, but

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1 it's important that the disruption that we're
2 talking about would be disrupting inequity.
3 Disrupting inequity has always been disruptive,
4 has always met resistance, and I understand why
5 and I understand we all have different roles in
6 all of this. But, that's what the disruption is.
7 There is an inequitable system, and in order to
8 get from inequity to equity, there will be
9 disruption.
10 I don't want to hide from that. I
11 don't want to pretend that's not the case. I
12 don't want to ignore that. I own that, but that's
13 what it is.
14 MS. PODZIBA: Thank you for those
15 proposals, Liz, and I think we'll put them in the
16 mix for after the break.
17 Ron?
18 MR. HAGER: I was going to pick up with
19 what Marcus said at the very end. We want to
20 encourage as much flexibility as possible, but at
21 the end of the day, I think what you said was all
22 schools are funded at a certain level.

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1 Isn't that what you said, Marcus?
2 And then you add to it the Title I
3 funds. That's really I think what Supplement Not
4 Supplant truly means.
5 So in terms of these proposals, at the
6 end of the day, you want to make sure that we're
7 adding resources to the Title I school. No matter
8 how we allocate the staff, how we a locate the
9 funding, the services, we want to make sure that
10 at the end of the day we've added resources to the
11 Title I school.
12 So that's my comment.
13 MS. PODZIBA: Alvin?
14 MR. WILBANKS: If you look on Page 5,
15 and I'm not necessarily making a proposal here,
16 but I am making a suggestion how this might get
17 solved. I don't know that some folks might not
18 fall out of their chairs, so hold on.
19 But I think if you go to the top of the
20 page and look at the paragraph that begins
21 "Results in the LEA spending amount of state and
22 local funds equal to each Title I school that is

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1 greater to or equal for the amount spent in
2 per-people Title I schools, non-Title 1 schools,"
3 and then the "less personnel costs".
4 I think principals make a good case
5 that years of experience don't necessarily make
6 good teachers. Now they don't necessarily detract
7 from being a good teacher. You can just look at
8 me and say I probably value your experience. On
9 the other hand, there are some staffers that come
10 in every day that do great work. They can engage,
11 excite, they're very dynamic, and I think that's
12 one way of getting at it.
13 Obviously you have to have a teacher in
14 every classroom. We don't need any more research
15 to prove that. So, just make sure you get a good
16 teacher, and I think that's what the school
17 districts do.
18 I don't think we can legislate some of
19 this stuff, because we've got to have people
20 running schools that want to do the right thing
21 that goes all the way from being fair to people to
22 discrimination. That kind of stuff.

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1 So I don't have a problem with the
2 discussion up here, but the sticking point is
3 personnel funding. And I think we're spending a
4 lot of time on something that probably doesn't
5 make as much difference as some things.
6 MS. PODZIBA: Ok, it's five to 11:00.
7 Let's take a break to 11:15, break 'till 11:15,
8 and then I'll tell you what we're going to do when
9 we come back.
10 (Recess taken.)
11 MS. PODZIBA: All right, I think we can
12 reconvene. Kind of extra-long breaks is often
13 what the last day of the reg negotiation process
14 looks like.
15 When we broke we had multiple proposals
16 for Supplement Not Supplant for that compliance
17 issue, and Liz, there was some interest in what
18 you had put forward just before we broke.
19 So, I would like to ask you if that's a
20 plausible proposal, if you could say it again,
21 slowly, so that Judith could get all the
22 parameters up.

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1 Then here's what I would propose, is
2 that we'll print out multiple proposals, give them
3 to you to discuss over lunch, see if someone has
4 some way of integrating the plausible proposals
5 into another single proposal that we can then work
6 with after Assessment.
7 Does that sound like our best shot at
8 succeeding toward consensus?
9 Ok, Kerri?
10 MS. BRIGGS: I'm not sure that it was
11 captured right, so --
12 MS. PODZIBA: Ok, so let's take a
13 minute and fix that, and then we'll go to Liz.
14 MS. BRIGGS: Mine was basically to
15 eliminate the -- it would go straight from
16 romanette (ii), "An LEA may determine the
17 methodology," blah blah, "provided that" -- we can
18 eliminate all of that stuff in there, "provided
19 that the methodology consideration"...
20 MS. PODZIBA: Ok, now we'll just do a
21 whole other section.
22 Liz, are you ready to do that or do you

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1 need a couple of minutes?

2 MS. KING: Yeah, I'm just being totally

3 honest. The edits I proposed are not sufficient

4 to make me comfortable with this, but in the

5 spirit of operating within the proposal that has

6 been offered, that's why I wanted to keep going on

7 this.

8 I am still not sure how this is

9 evidence -- leaving aside the funds question,

10 because I don't think it's about funds, I'm also

11 not sure how it's evidence of federal funds being

12 supplemented.

13 So just, you know, with all those

14 caveats, the three things that I have asked to add

15 before were -- and I'm sorry that I don't have

16 better language, I'm not sure when to do that,

17 but --

18 MS. PODZIBA: Ok, yeah, just give us

19 the concepts.

20 MS. KING: Yeah.

21 MS. PODZIBA: And I think that everyone

22 should understand that with those caveats.

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1 MS. KING: So the first is that we're
2 clear that the FTE staffing formula is that we are
3 only talking about those FTEs funded through state
4 and local sources, that we are only taking into
5 consideration filled positions and not vacancies.
6 MS. JACKSON: Can you explain what that
7 means?
8 MS. KING: Sure. So there has been a
9 problem in the past in the comparability
10 requirement where they would say, We have four
11 teachers at this school and four teachers at that
12 school, but really you have three teachers at that
13 school and one posted vacancy, and frankly it
14 happens in the most hardest to establish schools,
15 for obvious reasons. These are the challenging
16 places where it's hard to find educators. But I
17 don't think it's fair to ascribe an educator or a
18 vacancy as not serving the children.
19 So in the context of what we are
20 talking about, the people in front of the
21 children, I think you need to be clear that you're
22 talking about filled positions and not vacancies.

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1 The third criteria then was that all of
2 the staff, I'm not sure -- all of the staff in the
3 district are assigned based on the district
4 formula. So, you couldn't have sort of, you know,
5 seventy-five percent of the staff go out through
6 this formula, and then you have a system of sort
7 of district-level discretion about where to add
8 extra people that are not accounted for in this
9 formula.
10 Now I think that there is a way, if,
11 for example, the method for allocating staff --
12 oh, there's also a hanging question about
13 non-staff instructional, and maybe that gets to
14 Alvin's point earlier. Maybe that's sort of where
15 this starts going is a hybrid of this plus actual
16 expenditures, non-salary actual expenditures, or
17 something like that.
18 But, yeah, I just wouldn't -- I would
19 want to make sure that all staff vote for this
20 formula, and then I will add in my own notes this
21 question about non-staff resources.
22 So, my obvious -- and I will continue

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1 to -- nobody is surprised to know that I think the
2 actual expenditures is a much better way of doing
3 that, and them my assumption is also that, any
4 district that complies, based on the national
5 expenditures test, would not want to bother with
6 all this mess in sending to the state or to
7 anybody else what their salary schedule is and
8 what their method is. You know, they would just
9 submit their LEA report card as evidence of
10 compliance and then move on.
11 So we are only talking about those
12 schools, those districts where this is an inequity
13 in funding; would being compliant with this test
14 justify their having violated the funding equity
15 test.
16 I am not convinced that's that's the
17 case, but I think it is worth looking at and
18 thinking about seriously.
19 MS. PODZIBA: Any other questions just
20 about the proposals on the table before we move to
21 Assessment?
22 MR. POHLMAN: If we have new questions

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1 on Supplement Not Supplant, can we -- it's very
2 short.
3 MS. PODZIBA: Sure.
4 MR. POHLMAN: Number two, the
5 districtwide costs and services, I think that as
6 I'm reading it, it still remains a little unclear
7 to me what that means. So, I think we're using a
8 term that I'm not familiar enough with with all of
9 your -- everything the FTEs, et cetera, but to the
10 extent it's never been defined or otherwise
11 discussed. I think it would be important to
12 define that term, as it's used several times, if
13 it was not otherwise defined. So --
14 MR. AMERIKANER: Just to clarify, which
15 term? Is it districtwide costs and services?
16 MR. POHLMAN: The whole section here on
17 districtwide costs and services.
18 MR. AMERIKANER: Yes, districtwide cost
19 and services term?
20 MR. POHLMAN: So I don't know what that
21 means. It may be defined elsewhere. That may be
22 my ignorance --

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1 MR. AMERIKANER: No, it's not defined
2 elsewhere, and if people have -- if people have
3 suggestions about how to clarify it, we're very
4 open to it. We actually would be happy to hear
5 suggestions.
6 If we don't clarify it here, we could
7 consider clarifying it in Guidance, or ultimately
8 we may have the states clarify it, or the country,
9 or the universe.
10 MS. PODZIBA: So, Liz, thank you for
11 bringing that proposal forward with some concrete
12 suggestions or possibilities.
13 So we will try and get that whole thing
14 printed out for people to have, and if they want
15 to discuss it again, it would be helpful if some
16 people were to try to develop an integrated
17 proposal from those so that we had another place
18 to start.
19 Lara?
20 MS. EVANGELISTA: I just had another
21 thing to add, under the Exceptions, where it says
22 "a school that enrolls fewer than one hundred

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1 students," I just wonder if that could be
2 expanded, because, having founded a school that
3 started off with a hundred students and then moved
4 to two hundred and then three hundred, I think it
5 should be around two hundred.
6 I know that as we grew in size that we
7 are now, within those first two years -- and at
8 two hundred, very often the administrative costs
9 may not -- may be able to meet that requirement,
10 so.
11 MS. PODZIBA: Delia, last comment on
12 Supplement Not Supplant.
13 MS. PODZIBA: There is a provision in
14 the law elsewhere that low-income students and
15 students of color can't be taught at higher rates
16 by ineffective or inexperienced teachers, and
17 there's some other language also.
18 I would like to, if we go forward with
19 (C) that Liz just added, I would like to add that
20 citation there so it's clear that there's some
21 balance there.
22 MS. PODZIBA: Ok, we're going to

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1 completely come back to this. So we don't need to
2 negotiate the proposals, because the idea is for
3 people to look at them over lunch and see if it
4 triggers any other additional thought.
5 Ok. So, I'd like to move us to
6 Assessment, because my sense is if we can finish
7 all of Assessment, then we'll know how much time
8 we have left for Supplement Not Supplant after
9 that. Ok.
10 So, Patrick.
11 Everyone received the new package and
12 I'm going to turn to Patrick to tell us what it is
13 that you have.
14 MR. ROONEY: Give me a minute to get
15 myself organized. Feel free to do some light
16 reading on your own while I organize myself.
17 Hi, everyone. So welcome back to
18 Assessments.
19 So it's the last day and there are a
20 few things I want to say first. Rather than
21 continue to work through the issue papers, which
22 is what we went through yesterday and the previous

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1 sessions, in the interest of time, both on our end
2 to make the changes and in our end internally and
3 then as a group, we put it right into the full
4 package of Issue Paper 6, and we based it on the
5 clean version that we gave you last week, and then
6 we updated it based on the conversation yesterday.
7 So I would like to start by giving a
8 shoutout to my colleagues who have been working
9 very feverishly with trying to make the changes
10 you discussed yesterday and then come up with some
11 additional ideas that we're going to talk about
12 this afternoon or this morning today. So
13 hopefully we will get consensus.
14 I think, one, I very much appreciate
15 the conversation yesterday. I think we heard a
16 lot of good suggestions. We tried to incorporate
17 much of them, although not quite all of them, and
18 I'm happy to talk through those as we go through
19 this morning and this afternoon.
20 And second, I think there's been a
21 question that I've been asked and I think others
22 may have asked this question, too, about, you

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1 know, what does consensus mean, and I'm happy to
2 talk about the protocols, but, you know, our
3 interest in the Department is to try to get
4 consensus on the full set of Assessment
5 regulations that we proposed and not to do this
6 piecemeal, and what our protocol says is that we
7 will strive for consensus and try to get consensus
8 on all of Supplement Not Supplant and all of the
9 Assessments and not to break those into smaller
10 pieces.
11 So, from our perspective, having
12 consensus on parts of the regulation doesn't
13 really help us, because all of this is around the
14 guidance of the states on their assessment
15 systems, and you need the pieces together and the
16 interaction between the pieces.
17 As you've seen in the last two
18 sessions, when we do a lot of interaction between
19 and cross-references between the sections
20 individually, it's hard to provide Guidance to
21 states, but the entire Assessment regulations are
22 needed to provide that direction and support to

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1 the states on how they have to meet this
2 requirement in the law to have Assessment systems
3 for reading, mathematics and science for all their
4 students.
5 So I wanted to say that up front.
6 You'll have to bear with me a little
7 bit, because like you I'm also looking at this for
8 the first time. So I think I know what it says,
9 but there will be a little bit of discovery.
10 In addition to the full package there
11 was a cheat sheet that was handed out, which I
12 know all of you should have gotten, which is like
13 a one-page summary that tries to highlight where
14 are the things that were discussed at the end of
15 the day yesterday that we needed to come back and
16 discuss.
17 I am going to use my discretion to
18 actually not go in chronological order, because I
19 think it actually makes sense to try to more or
20 less follow the order of the discussion from what
21 happened yesterday and go from some of the more
22 larger questions that were remaining from the

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1 discussion yesterday and work through those first.
2 So I'm going to ask that we turn to
3 200.6, which is where the majority of the
4 discussions were. That starts on Page 12.
5 The other things I mentioned about this
6 is, the graying out is going to look different
7 today than it did yesterday. The team, when they
8 were putting this version together for our
9 discussion, grayed out -- or actually they
10 un-grayed out the areas that were still under
11 discussion from yesterday to try to point our
12 attention to those topics that we agreed that we
13 were going to come back and talk about further.
14 So, that hopefully will help us
15 identify the pieces that we need to talk about,
16 notwithstanding I know there are other pieces we
17 have to have consensus on and everything, but I
18 think that's helpful from our vantage point to
19 look at it that way.
20 So I'll start at the beginning of
21 200.6(A). I'm going to jump around in this, I'll
22 warn you now. But I'll start at the beginning of

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1 200.6(A). So this discussion was in Issue Paper
2 (4)(a) it's about including students with
3 disabilities in the assessments, and (A) romanette
4 (ii), which starts on line 13, talked about
5 "Students with the most significant disabilities
6 were identified as being a subset of all children
7 with disabilities as identified under IDEA".
8 I think it was Regina commented that
9 the IEP team doesn't necessarily make that
10 decision. So we deleted that reference within
11 this paragraph.
12 I think we still kept it later when we
13 talked about the IEP team providing the
14 accommodations for students. But in this piece in
15 (A) romanette (ii), we just deleted the reference
16 to the IEP teams.
17 MS. PODZIBA: Lynn, did you have a
18 comment on this?
19 MS. GOSS: No, he answered it, I'm
20 sorry, when he said it was from (4)(a).
21 MR. ROONEY: Thank you. I'll try to
22 reference the issue papers. You guys yesterday

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1 were taking your notes in the issue papers. I
2 think in the interest of time we just tried to put
3 it in the full package, but I will try to keep us
4 grounded.
5 In the beginning of the discussion,
6 most of it will come from (4)(a). Some of it will
7 come from (4)(b). That's 200.6 as this full
8 section of the regulations is focused on how we
9 include students with disabilities and English
10 learners in the assessment system.
11 MS. PODZIBA: And this was a
12 clarification. So, any further discussion of this
13 change?
14 Ok. Is there any dissent from adopting
15 a tentative agreement on this section, just this
16 little piece?
17 Ok. Just remember these are the
18 sections that were remaining in the issue papers
19 that we didn't have tentative agreement on.
20 Ok, so that one's good.
21 Ok, Patrick we can keep going.
22 MR. ROONEY: We'll keep going and for

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1 now we'll keep the chronological order.

2 So if we go down to little (b), this is

3 where we start to talk about accommodations, and

4 this again was in issue paper (4)(a) yesterday.

5 There was an outstanding question that I don't

6 think we quite came to resolution about where

7 accommodations -- "must provide students with

8 disabilities the appropriate accommodations such

9 as interoperability and ability to use assistive

10 technology devices". That is from the ESSA.

11 That's taken directly from the law, and we have

12 added a phrase, "consistent with

13 nationally-recognize accessibility standards".

14 And I think there was a question about

15 whether that clarification was needed. I think

16 we've talked internally amongst ourselves and we

17 do think it's helpful. I would say that this does

18 not change the requirement. The requirement

19 remains that states have to demonstrate or have to

20 provide the appropriate accommodations, and "such

21 as," interoperability with assistive technology

22 devices. And how states will be demonstrating

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1 that will be through demonstrating that they're
2 consistent with nationally-recognized
3 accessibility standards . So it's clarifying how
4 states will demonstrate that they have met this
5 requirement, and for that reason we felt it was
6 helpful to keep in the regulations.
7 MS. PODZIBA: Ok. Is there any further
8 discussion of that?
9 Ok. Is there any dissent from adopting
10 a tentative agreement on that?
11 MR. ROONEY: Ok, so moving on to Page
12 13, we'll state it in chronological order, and
13 this reference here, this was in Issue Paper
14 (4)(a). It also was in Issue Paper 3 and Issue
15 Paper 5(A). I'll show this language here, and
16 then we can -- I'll show you where the
17 cross-references are. It was the same requirement
18 that was repeated three times, but we did talk
19 about it because it applies for different reasons.
20 Here there was a question it had been
21 one large paragraph, and the suggestion yesterday
22 was we break it up into an (a) and (b), and we

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1 have thought about that approach, so, "The state
2 must insure that the use of appropriate
3 accommodations" under this paragraph, "does not
4 deny a student with a disability"... and then (a)
5 is "the opportunity to participate in the
6 assessment," and again, that is not underlying
7 because we didn't change the text. We just split
8 it off into little (a). And then little (b)
9 again, "does not deny a student with a disability
10 any of the benefits from participation in the
11 assessment that are afforded to students without
12 disabilities".
13 I think it might have been Liz
14 yesterday that tried to rewrite this and make it
15 into the affirmative -- I think we talked with our
16 colleagues with the Office of Civil Rights and we
17 felt like this maintained that idea, and hopefully
18 the language is clear as written.
19 I'll open it up to see if people have
20 any reaction to this.
21 MS. PODZIBA: I think this is just
22 turning the sentence into an affirmative sentence.

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1 Any questions or affirmative discussion?
2 Audrey?
3 MS. JACKSON: Patrick, can you refresh
4 me that this is separate from the idea for
5 nationally-recognized high school assessments
6 where we put in language about the students and
7 parents not having to ask for the accommodations?
8 Is that right?
9 MR. ROONEY: Good question, Audrey. I
10 think that was a proposal from the second session
11 that you might have brought up. I don't know. It
12 was definitely someone at the table made it.
13 MS. RICKER: Yes.
14 MR. ROONEY: That we ended up not
15 accepting or not taking. I'll tell you a little
16 bit about why.
17 I do want to point out, before I do
18 that, that this language will then appear in the
19 nationally-recognized or locally-selected
20 assessment.
21 If you flip back to page --
22 MS. JACKSON: We can wait.

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1 MR. ROONEY: Well, I will show you the
2 language in case it's helpful, to show you where
3 it's consistent. On Page 7, line 10 -- and this
4 is in Issue Paper 3 where we were talking about
5 the locally-selected, nationally-recognized -- the
6 language is consistent -- there is a slight change
7 in that in here. It's not just denying a
8 benefit -- it's not not denying the benefit, sorry
9 for the double negative, to a student with a
10 disability or student with a disability or English
11 learner, because this is about all students taking
12 the nationally-recognized assessment, so it
13 encompasses both groups of students.
14 Then, if you look on Page 19, line 34,
15 this is within the -- including English learners
16 in the assessment system. You can see it starts
17 with (F) on Line 19, which this is all Issue Paper
18 5(A) now. We changed the language here to be
19 consistent with the same language we just looked
20 at, but it's specifically talking about "does not
21 deny an English learner the same benefits that a
22 non-English learner would have".

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1 So, again, I want to point out that
2 that's different. It doesn't address your actual
3 question, which I think the reason we didn't
4 include the language, was something along the
5 lines that "insure that the LEA secures the use of
6 accommodations".
7 MS. JACKSON: The issue -- the concern
8 I had was that, as of right now, and again I'm
9 fifth grade, but the test that we are generally
10 familiar with that would fall into this category,
11 whether it's the SAT, ACT, that's a private
12 company. We in regulation can't dictate what a
13 private company needs to do, so we can't tell them
14 to change. But if the current practice is that
15 kids and their families have to apply for approval
16 to use accommodations, it is an extra burden on
17 them to secure something that should be done
18 right.
19 So the premise of my suggestion before,
20 the idea behind it was that children who are
21 entitled to accommodations should not have an
22 extra burden to prove that again to a private

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1 company in order to receive it.

2 MR. ROONEY: Yes, I agree with your

3 point. I think we had trouble figuring out how to

4 write this as a state requirement. And I think

5 "insure that the LEAs" here "the use of" didn't

6 quite work.

7 MS. JACKSON: Well, I wonder, if

8 there's anyone else who shares my concern, because

9 otherwise that would be silly to keep going with

10 this limited time, and if they do, maybe they do.

11 You may have better ideas and language, Ron, than

12 I do.

13 MS. PODZIBA: Patrick?

14 MR. ROONEY: Can I propose that we hold

15 that thought to the end?

16 MS. JACKSON: Yeah. Actually, that's a

17 great idea. We can work on the side and come back

18 later.

19 MS. KING: Language is in progress --

20 sorry, our proposal is in progress.

21 MR. HAGER: Which is going to be

22 perfect.

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1 MS. PODZIBA: Ok.

2 Kerri, did you have something on the

3 section that we are looking at?

4 MS. BRIGGS: It's a little bit contrary

5 to what Audrey just raised.

6 I've been wrestling in my head with who

7 has the burden to assure that the benefits aren't

8 changed as a result of allowing accommodation?

9 And I think -- again, I don't want to

10 change anything. I just want to be clear. So

11 it's the state that would have to say, even if --

12 there's purposes that they use the test for, and

13 that's obviously been their standard control, no

14 matter how a test is accommodated, if a test gets

15 used for something that's outside their control,

16 even in that situation, they need to insure that

17 the benefits aren't changed as a result of the

18 accommodation.

19 Does that make sense?

20 MR. ROONEY: I think that's right, and

21 I think the way states would meet this would say

22 that they have a list of accommodations that

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1 result in a score for the state's purposes, and if
2 a different set of accommodations led to the test
3 being reported to colleges, that that -- the state
4 would not have met its responsibility at that
5 point.
6 The same accommodations that lead to a
7 valid and reliable score for the state's purposes
8 should also provide the same benefit to students
9 who are taking the non-accommodated version of the
10 test.
11 MS. BRIGGS: So that helps a little bit
12 with Audrey's question. If the state is
13 responsible, even in the locally-selected test,
14 because the state is the one that's approving the
15 local agency selected, between the two of them
16 they're going to figure it out. If the test is
17 accommodated, it still has to have the same
18 benefit regardless of that.
19 MR. ROONEY: Audrey, do you think that
20 addresses your current concern, or do you still
21 think language would be helpful?
22 MS. JACKSON: I think the concept

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1 addresses it, but I would imagine it may need to
2 be more specifically just named -- not dictating
3 how, but the purpose of that. I'm seeing nodding
4 heads. I don't know.
5 Liz, so I think the issue here is that
6 when the ACT or SAT for example is a private test
7 that you pay to take, whatever, that the state
8 doesn't have jurisdictional responsibility. When
9 it's during a test-taking time, it's -- then the
10 non-discrimination protections apply. This does
11 not create a new right that has always existed,
12 but it's being clear that it applies in a new way,
13 if you're using an assessment that was not
14 previously used for this purpose.
15 I think the language about the clarity
16 of the responsibility, because it's the job of the
17 LEA to provide accommodations to children with
18 disabilities, is consistent with the right --
19 Tony, what do you think about that?
20 MR. EVERS: We have to do it anyway.
21 MS. JACKSON: Thank you.
22 MS. PODZIBA: Ok. So we'll set that

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1 aside and we'll ask the Department to figure out
2 how to address that question.
3 So anything else on this section on
4 Page 13?
5 MR. ROONEY: We do have one drafting
6 error that we want to just correct in 13, the
7 little (a) and little (b) should be a romanette
8 (i) and romanette (ii). We're in the weeds of
9 regulation writing.
10 MS. PODZIBA: Any discussion of that
11 change?
12 (Laughter from the committee.)
13 MS. PODZIBA: Is there any dissent from
14 reaching a tentative agreement on this section?
15 Alvin?
16 MR. WILBANKS: I'm having a little
17 trouble keeping up with Patrick here, but are we
18 on 200.6(C)(iv)(II)?
19 MR. ROONEY: Not yet.
20 MR. WILBANKS: Ok, I'll wait 'till you
21 get there.
22 MS. PODZIBA: So no dissent on this?

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1 Ok.

2 Ok, Patrick, keep going forward.

3 MR. ROONEY: Ok, I'm going to now jump

4 to talk about the definitions related to students

5 with the most significant cognitive disabilities.

6 So I'm going to jump to 200.6(E) on Page 18, line

7 29, and I think we heard the discussion yesterday

8 and understand the concerns that were raised about

9 whether the Department should define "students

10 with the most significant cognitive disabilities,"

11 and as a result of this proposal, for your

12 consideration today, for our discussion, we

13 removed the definition and moved the pieces that

14 seemed to have general agreement as good things to

15 have in place, which were the romanettes (i) (ii)

16 and Ron's proposal for romanette (iii), and moved

17 them to a different part of the regulations.

18 So if you look on Page 17, sorry for

19 jumping back and forth, this was all again in

20 Issue Paper (4)(a), there is a section (D),

21 starting on line six, which we spent a fair bit of

22 time on in Section 2, and then yesterday, which is

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1 the state guidelines, and this is about states'
2 alternate achievement standards, then (D) applies
3 for things that the state has to do, and one of
4 them already, number (D)(1), was "establish and
5 monitor implementation of guidelines for IEP teams
6 to determine whether students with the most
7 significant cognitive disabilities should be
8 taking the alternate assessment". That's what was
9 there already.
10 We have added that states now have the
11 discretion of how they define that group "students
12 with the most significant cognitive disabilities,"
13 and we include "such that," on line 17, and then
14 included romanette (i) (ii) and (iii) from what
15 was in the definition, which again we thought we
16 heard generally that people like those components
17 of criteria, that states should take that into
18 account when they're thinking about who this group
19 of kids should be who should take an alternate
20 assessment.
21 So I'll stop and see if people have any
22 questions on that.

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1 MS. PODZIBA: Ron?

2 MR. HAGER: We do have a couple of

3 concerns with this. The first one is that it's

4 not in the definition. We would definitely -- as

5 we talked about before, we believe there does need

6 to be a definition that's consistent across the

7 country.

8 The whole point of having the promises

9 that we built, the subcommittee's recommendations,

10 were making sure that students, you know, get --

11 that we don't have students taking the assessments

12 that shouldn't be taking the assessments, and we

13 really want to make sure that there's consistency

14 across the country.

15 Ironically yesterday we spent a lot of

16 time talking about military families, and we

17 actually were willing to go beyond the definition

18 and the statute to accommodate, you know,

19 reporting on groups of military families, and the

20 definition of military families was within the

21 provisions of "highly-mobile people". And so the

22 most -- one of the most highly-mobile groups of

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1 people in the country are military families, and
2 we want to make sure that when a "military family"
3 goes from one part of the country to the other,
4 they have the same expectation about whether
5 they're going to be in this assessment or not.
6 The assessment, you know, identifying a
7 student to take this assessment includes the --
8 that the testing, the teaching that they're going
9 to receive is not going to be the same as the reg
10 content. So a student, you know, this is a
11 significant issue in a student's life to be
12 determined to be needing this type of assessment.
13 So we want to make sure that the
14 students are most protected in this process.
15 And another thing, ironically -- I get
16 two ironically's here. The second ironic is, last
17 night a number of us got an e-mail from someone
18 from Michigan, and she was talking about how
19 things are in Michigan, and Michigan is one of the
20 states that doesn't have, in our view, a good
21 standard, and she said, "We'd love to see" -- "In
22 Michigan it would help us a lot if we could have

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1 the DLM as our criteria," or don't put it in
2 Guidance -- or do put it in Guidance; don't put it
3 in the Regulation. Like now there is nothing that
4 would prevent Michigan from adopting the DLM
5 standard.
6 So if we put something in Guidance, we
7 are not helping Michigan get to the point that
8 they want to be at.
9 So we feel there needs to be something
10 that's really enforceable. That's why we think
11 the definition has an advantage, because it is
12 enforceable.
13 Because, you know, we want to -- we
14 have agreement through the bulk of the states in
15 this country about a standard. It's really a
16 relatively small number of states that don't meet
17 the standard, that we want to give a push to get
18 them to that point, and so that's why we really
19 believe that having it in the definition is
20 something that will help push those states.
21 By the way, very few states that are
22 represented at the table here are in that

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1 situation. You know, almost every state here is
2 either meeting the DLM/NCST standards, because
3 they adopted it, or they're reading it. So it's
4 really not -- you know -- that's enough for now.
5 I really think it should be in the
6 definition. Thank you.
7 MS. PODZIBA: Richard?
8 MR. POHLMAN: Ron, as a point of just
9 sort of a technicality, from the way I viewed this
10 actually, I think that the same requirement that
11 was in the Regulations yesterday is in the
12 requirements now, and I'm wondering what your view
13 is on like having this change, why it's -- what's
14 the significant change here in your view that
15 takes it from a definition section to a section
16 that requires guidelines and that those guidelines
17 include the definition -- a state-level
18 definition, and is that -- is that sort of the
19 "such as" clause?
20 Maybe I -- sorry, again, we're all
21 reading this at the same time. So maybe that's
22 the "such as" clause, what you're going after,

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1 Ron. I don't know, but it may be helpful for all
2 of us around the table to understand your
3 objection to the exact language and where it's
4 included, a little more than sort of the more
5 overall where it's going to be placed in the
6 statute.
7 I know you're reading it at the same
8 time too, so I'm sure you're getting notes passed
9 up.
10 MR. HAGER: I did want to talk first
11 about the more general concern about how we
12 believe a definition has greater enforceability in
13 general, and then in terms of the actual language,
14 I know that we had objected to removing the (E)(1)
15 language, which is not in there, so we would
16 definitely want to have the (E)(1) language put
17 back in that, you know, "students are those whose
18 disabilities significantly impact cognitive
19 functions and adaptive behavior".
20 We also talked yesterday about having
21 in the Guidance the idea that the definition of
22 "cognitive functioning" and "adaptive behavior" is

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1 both, not one or the other.

2 And then the other piece is that the --

3 there needs to be a definition of "adaptive

4 behavior," whether it's the one that was proffered

5 by the Department or another one. We don't want

6 to have no definition of adaptive behavior.

7 So those are the more specific concerns

8 of this proposed language, but the general concern

9 about -- it's really more of an enforceability

10 issue with the definition versus Guidance -- not

11 Guidance, guidelines.

12 MS. PODZIBA: Ron, do you want to make

13 specific proposals to the language here?

14 MR. HAGER: I definitely want to

15 propose, no matter where it is, that we would add

16 this (E)(1) --

17 MS. PODZIBA: Be specific.

18 MR. HAGER: Yeah, the original language

19 from (E)(1) that was removed from page, was it 19?

20 18? And it doesn't have to be the exact same

21 language that's here. I have considered --

22 MS. PODZIBA: Do you have a proposal?

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1 I guess that's -- I realize you just saw this.

2 MR. HAGER: Yes, and someone has been

3 helping me deal with two things at once.

4 MS. PODZIBA: Do you want to hear from

5 other people, other people's responses?

6 MR. HAGER: In terms of the general

7 response, yes.

8 MS. PODZIBA: So we know that Ron has

9 and perhaps Liz has a concern about this. Do

10 other people have any other further discussion

11 points on this? Does it look acceptable to

12 everybody else?

13 Would there be any dissent from this?

14 Well, I'll ask the question. Would you dissent

15 from this?

16 MR. HAGER: As currently written, yes,

17 definitely.

18 MS. KING: Yeah, I just -- we have been

19 fighting like a whole lot for a definition, which

20 I'm sure everyone has noticed, and I sort of --

21 it feels like a lot to take to sort of not do this

22 any more. I mean, I think we've gotten some

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1 language that we would certainly need in here. I
2 mean, I guess we can put that forward and see if
3 that --
4 MS. PODZIBA: Would it be more
5 comfortable if we just moved to another issue, so
6 maybe over lunch you can settle your thoughts?
7 MS. KING: Ok, yeah.
8 MS. PODZIBA: All right. Is that ok,
9 Patrick, if we do that? It seems like they need
10 time, and we'll all benefit from them having time.
11 MR. ROONEY: Yes, that's fine, and we
12 might have a slight change to proposed romanette
13 (iii) that I can work with Judy over lunch to give
14 her a chance to write out, so you guys can take a
15 look at it. I think this doesn't change the
16 substance. It just changes the language a little
17 bit less than what's on the page.
18 MS. PODZIBA: Ok. So let's set that
19 one aside and keep going through the rest of the
20 package.
21 MS. KING: So can we do like a proposal
22 with this language that we think would be ok, but

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1 we want to check?

2 MS. PODZIBA: Sure.

3 MR. HAGER: I just didn't know where it

4 went.

5 MS. PODZIBA: Give us exact locations.

6 MS. KING: This would be to insert a

7 new romanette and then renumber accordingly, and

8 this is I think the language Ron said. It would

9 be students are those who --

10 MS. PODZIBA: Wait, wait, I still don't

11 know where you want it. So it's a new number (i)?

12 MS. KING: Yeah, new number (i).

13 "Students are those whose disabilities

14 significantly impact cognitive functions and

15 adaptive behavior".

16 And then the existing -- I think we can

17 do that, and so as a conditional, I think we would

18 be ok, right. And then also the adaptive

19 behavior, yeah, let's -- can we put a pin in the

20 adaptive behavior issue and say that I think we

21 could be ok with that as amended.

22 MS. PODZIBA: Is there a discussion of

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1 this proposal?

2 MS. JACKSON: Would you then just

3 reinsert the definition of "adaptive behavior"

4 from yesterday? Does that go under that?

5 MS. KING: I don't know -- the language

6 from yesterday I think is not -- I think we're not

7 comfortable with this whole cloth, but we can talk

8 about that.

9 I think it would be helpful to hear

10 from other folks on that adaptive behavior issue.

11 MS. PODZIBA: Ok. So, we've got a

12 response.

13 Lynn?

14 MS. GOSS: By adding that, you know,

15 saying that we're going to define this at the

16 state level, by adding that statement you have

17 actually just defined it. So, I don't think it

18 should be in there.

19 Liz?

20 MS. KING: I mean, I disagree, because

21 I would rather it was a definition. I think --

22 and this is again a theoretical, if we are ok with

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1 this, I think the way that we would be ok with it
2 is that the state developed its own guidelines.
3 But in the context of sort of the
4 guardrails conversation, I mean, I think, if we're
5 just going to not have a definition in federal
6 regulation and just leave a definition up to the
7 states, then we need guardrails, and I just -- I
8 don't think we can go less "guardish" than this.
9 But, I mean it's still a state
10 definition. It is not a definition in Regulation,
11 so.
12 MS. PODZIBA: Lynn? Your card is up.
13 MS. GOSS: No.
14 MS. PODZIBA: Kerri?
15 MS. BRIGGS: I've been wrestling with
16 this proposal. So, one idea I've thought about
17 is, because we know that some states are doing
18 this well, is that should the definition be
19 included, and I actually really like the way you
20 guys redid this, so, my preference would be to go
21 with what you had...
22 Should a definition be included, it

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1 would only get activated should a state need a
2 waiver to the one-percent law. So it's up to the
3 states to do what they're doing, assuming they're
4 doing the right thing.
5 And again, remember that until four
6 months ago it was perfectly fine to test more than
7 one percent students with this test. There is a
8 transitioning, but I totally appreciate where
9 we're coming from. So I'm just thinking that,
10 apply the definition when appropriate.
11 MS. PODZIBA: So that would be a
12 proposal. Is there a response to the proposal?
13 Liz?
14 MS. KING: That be would the definition
15 from yesterday?
16 MS. BRIGGS: It's a definition we came
17 to an agreement on.
18 MS. PODZIBA: Just be careful, because
19 this isn't a definition. This is guidelines.
20 MS. BRIGGS: Yes, the definition from
21 yesterday.
22 MS. PODZIBA: So go back to the

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1 definition.

2 MS. BRIGGS: I would not add in the new

3 romanettes you added into the Guidelines, because

4 again that's giving direction to states as they're

5 thinking about how best to think about this group

6 of students in the most appropriate way to assess

7 them.

8 And again, assuming that many states

9 are doing the right thing and are on their way

10 towards that path to eliminate both the new

11 romanette (i) and, this is like a fifth one I

12 would think.

13 So leave the Guidelines as I've just

14 proposed, moving a more complete definition into

15 the waiver section that gets activated basically

16 in the state's request for waiver to the

17 one-percent cap.

18 So, I don't know the timing of that. I

19 don't know as part of getting a waiver that they

20 have to move to the definition that we all agree

21 on, the more complete one, or if that -- the

22 timing of that is accruing.

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1 MS. PODZIBA: Audrey?

2 MS. JACKSON: I've been over here

3 needling Kerri to share her idea, because I think

4 the teacher needs this as like a nice compromise

5 and balance of the intent of what it's supposed to

6 do, and if you're doing well already, there's no

7 need to have like more specific, you know,

8 prescribed specifics.

9 MS. PODZIBA: Could we get responses

10 from others about that? So these guidelines would

11 stay in but then the more concrete definition

12 would be a requirement of states that were

13 exceeding one percent, the one-percent cap.

14 Tony, yeah, I'm looking at you.

15 MR. EVERS: Well, to be honest, I

16 prefer what the Department has proposed. So,

17 you're suggesting that the entire definition from

18 yesterday that popped into the waiver-ese, which

19 frankly it's there with great, deep concern,

20 because it's extraordinarily complex, and so

21 adding that complexity to that process that's

22 already regulated I would have trouble with.

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1 MS. BRIGGS: Can I just say one
2 comment?
3 MS. PODZIBA: Sure.
4 MS. BRIGGS: I totally appreciate that.
5 Actually having spent time reading through all the
6 waivers in ESSA, I know the complication of
7 waivers. I don't necessarily agree that's great
8 state policy, but I do understand something about
9 having specificity and certainty at this point in
10 time around the process.
11 So it's in that sphere of, I'm not
12 certain it's the best idea, but it's an idea.
13 MS. PODZIBA: And I think it just -- it
14 gets to the point that came up in the subcommittee
15 a number of times, which was that the states --
16 that this should affect the states that aren't
17 doing the right thing.
18 Lisa?
19 MS. MACK: As one who has spoken a
20 great amount about this, I appreciate Kerri's
21 suggestion.
22 MS. PODZIBA: Patrick?

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1 MR. ROONEY: So I don't want to cut off
2 this discussion, which I think is a good thing for
3 the group to consider, and we're happy to continue
4 discussing this. I will forecast that we made
5 some other changes to 200.6(C)(4), which is the
6 part of the law that's Issue Paper (4)(b) about
7 the criteria for a state to request a waiver if
8 they exceed one percent, that are kind of in line
9 a little bit with what Kerri said, although in a
10 different way.
11 So I might propose that we come back to
12 this concept, because Judy was going to have to go
13 down the screen in the right spot of where it
14 would go when we start talking about 200.6(C)(4),
15 so it may be possible that we can talk about this
16 in the context of the other changes that we
17 proposed from yesterday that may help provide some
18 more context for the discussion.
19 So, if that's ok, that would be my
20 proposal.
21 MS. PODZIBA: Ok, I think that's
22 probably a good idea. Why don't we set this aside

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1 for now and pick it up again after we've gone
2 through that section, the waiver section.
3 MR. ROONEY: And I do have two drafting
4 suggestions back on the language we were
5 discussing in (D)(1). The consensus from the
6 group was to keep, or tentatively agree to keep
7 romanette (i), and I think we would start with
8 "such students," and we added the word "such," and
9 then I can tell you what are the changes that we
10 would consider for romanette (iv) are, rather than
11 doing it during the break so you guys could see it
12 on the screen all at once.
13 So we would delete in the second line
14 to include "those students who may require" -- or
15 I'm sorry, "do not require those students who
16 may," and so it would say, add the word "require".
17 Delete the word "direct" in the line below, and
18 then delete the "comma," "be able" in the row
19 below, and then after -- we want to keep the
20 "to" -- I'll read it over so everyone can see it
21 when I'm done -- "to achieve measurable gains on
22 the challenging state academic content standards

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1 for the grade in which the student is enrolled".
2 And then I would delete the remainder.
3 So, I don't think substantively this
4 changes it, but it's saying that such that these
5 students -- "students with the most significant
6 cognitive disabilities require individualized
7 instruction and substantial support to achieve
8 measurable gains on the grade's content standards
9 in the grade for which the student is enrolled".
10 MS. PODZIBA: Ron?
11 MR. HAGER: I have a question
12 specifically about why you removed the rest from
13 the language. I mean, that's something that's
14 really imbedded in these principals quite heavily,
15 and pretty much everyone that uses the guidelines
16 already are -- that's part of their criteria. So
17 I just don't know why you took that word out.
18 I can understand from yesterday why you
19 took some other stuff out, but not the "direct".
20 MR. ROONEY: So I think from your
21 perspective we weren't sure what "direct" meant.
22 If it's individualized instruction, wouldn't

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1 "direct" -- it seems ill-applied to us. I don't
2 know if people feel strongly about including it.
3 I think that be would ok.
4 If you're talking about expensive
5 individualized instruction then the implication is
6 that it must be direct.
7 MS. JACKSON: So, I actually disagree.
8 MR. ROONEY: Maybe "direct" has a --
9 MR. ROONEY: Audrey looks like she has
10 a comment.
11 MS. JACKSON: Kerri just asked me if it
12 applied.
13 I do individualized instruction with
14 twenty-six kids in terms of adapting their entry
15 point to it, the way they would practice,
16 facilitating small group work. I get that you
17 disagree --
18 MR. ROONEY: No.
19 MS. JACKSON: I mean, not that you're
20 always doing that, but things can be
21 individualized without being this one-on-one or a
22 one-on-two setting, which I think that's what the

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1 goal is to imply.

2 So if that's the case, that would be,

3 just from my experience, I do have individualized

4 instruction all the time and it's not --

5 MR. HAGER: And to reinforce, the

6 phrase "direct individualized instruction" is kind

7 of like a term of art. It's in the DLM and NCST

8 criteria. It has got research behind it, so it's

9 kind of a phrase that goes together.

10 MR. ROONEY: We're amenable to adding

11 it back in. And I'm happy to hear more discussion

12 on it.

13 MS. PODZIBA: Ok, is there further

14 discussion on the revision?

15 Ok, so we're going to set this aside

16 for now, and --

17 MR. ROONEY: Do you need to set this

18 aside with the changes to romanette (i) that Liz

19 and Ron suggested and romanette (iv) that we

20 suggested? Do people want more time to think

21 about it?

22 MS. PODZIBA: I can see if there is

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1 consensus on this. The proposal is on the board.
2 I can't see it, but you all can.
3 Is there I think dissent from adopting
4 a tentative agreement on this?
5 MS. JACKSON: Could you just show the
6 line above. Ok. So it's not a definition.
7 MS. PODZIBA: So I'm seeing no dissent.
8 There's no dissent.
9 MS. GOSS: No, there is dissent.
10 MS. PODZIBA: There is dissent. I just
11 need you to raise your hand or your card. You're
12 dissenting on this.
13 So this isn't going to work. So I
14 think we need to set it aside for now.
15 Patrick?
16 MR. ROONEY: Sorry, it would be helpful
17 for us to know, is one of the additions the part
18 that you're dissenting to?
19 MS. PODZIBA: Lynn was dissenting from
20 the first romanette.
21 MR. ROONEY: Thank you. That's helpful

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22 for us to know.

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1 MS. PODZIBA: Do you want to say a
2 little bit more about that?
3 MS. GOSS: Basically it's telling the
4 states that they have the ability to define it,
5 but then it tells them how to define it. So I
6 guess that's the point of where we're at.
7 MS. KING: Sorry, Lynn, is there an
8 edit that you'd want in?
9 MS. GOSS: The original language that
10 they came out earlier with today was probably the
11 best that we have seen so far.
12 MS. KING: So you just don't want any
13 mention that these are children whose disabilities
14 significantly impact cognitive functioning in
15 adaptive behavior?
16 MS. GOSS: Adaptive behavior isn't
17 actually in the law, but we're talking about
18 significant cognitive disabilities, and those are
19 the students that are identified in the IEP
20 process.
21 So, by defining it, I personally feel,
22 as Tony stated, I don't know, however many

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1 meetings ago, that it would actually interest a
2 number of kids.
3 MS. PODZIBA: Tony.
4 MR. EVERS: I'd sure like the
5 opportunity to share this with some staff members
6 of mine.
7 MS. PODZIBA: Ok. So why don't we --
8 do you want one more statement before --
9 MR. HAGER: Just one more.
10 The reason why adaptive behavior is in
11 there is there are students that may not
12 demonstrate -- it is both, so it's not one or the
13 other. That's the first qualification.
14 But there are students who may not test
15 well, and so their cognitive functioning may
16 appear to be lower than it is, but their adaptive
17 behavior is at a higher level, so that they're
18 actually able to do more than they may be able to
19 demonstrate on the psychometric testing and things
20 like that.
21 So you want both criteria to be met
22 because you want to make sure that the reason why

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1 they're demonstrating cognitive -- significant
2 cognitive delays is because of cognition, not
3 because of something else that's just not being
4 adequately assessed.
5 It's described as the same -- even
6 though we're not talking about the definition of
7 intellectual disability, it's the same principal
8 of why in the definition of intellectual
9 disability it talks about significant cognitive --
10 it talks about, you know, intellectual functioning
11 and adaptive behavior. So we're using the same
12 concept for the same reason.
13 For the same reason we have that in the
14 definition of intellectual disability, we believe
15 it's critical to have it in the definition of
16 students with the most significant cognitive
17 disabilities.
18 It's already in the DLM and NCS
19 standards. Really what we're trying to come up
20 with is a set of criteria on the NCS, DLM
21 standards without fully laying them all out.
22 And so that's why we want the

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1 significant cognitive function and adaptive
2 behavior to be included in whatever state
3 guidelines are selected. You know, we want to be
4 framing it with that in mind.
5 It's not really telling them what to
6 do. It's just telling them, within your
7 definition, This is the framework within which
8 you're working.
9 MS. PODZIBA: Tony.
10 MR. EVERS: I apologize for stepping
11 out. I'll never do that again.
12 When I left there was a conversation
13 about having the entire definition to the waiver
14 process, and I assume we were heading in two
15 different places. I'm going to talk about that
16 later. Is that what's on the table? I mean, that
17 frames this. Is the definition that was in the
18 original (4)(a) going to be proposed to be in the
19 waiver process? And then I could respond
20 chronologically to this.
21 That's my problem. My problems is I
22 left.

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1 MS. PODZIBA: I think we need to move
2 from this for now and we're going to need to come
3 back to it.
4 MS. KING: Sorry, Susan. It would be
5 helpful when we're sort of talking about options
6 and getting better advice to be able to
7 participate in real-time, if there are any other
8 concerns.
9 I think we heard Lynn's concern. If
10 there's any other concerns with this, because I'm
11 just worried about, if we go back and get
12 agreement from our folks, Is this what it's going
13 to be, or, Is there some other concern outstanding
14 that we should take into consideration?
15 MS. PODZIBA: I think the other concern
16 that was just raised is, Does this settle the
17 whole question, or is it a piece of a bigger
18 question?
19 MS. KING: Ok. But is that it? So
20 it's the waiver question. It's Lynn's concern.
21 MS. PODZIBA: Alvin?
22 MR. WILBANKS: Before we leave it, I do

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1 have some concerns about the waiver, which is on
2 14.
3 MS. PODZIBA: Right, we're going to
4 move to that in just a minute, if you could hang
5 on just a second.
6 Kerri?
7 MS. BRIGGS: I was just going to
8 clarify that I think there's three proposals under
9 consideration: one was the original fed proposal
10 that talks about romanettes (i) (ii) and (iii).
11 That was proposal one.
12 Proposal two was the proposal with the
13 additions that Liz and Ron added at the top and at
14 the bottom.
15 And then proposal three, and we'll also
16 talk about it, proposal three was, we've been
17 sticking with the original fed proposal -- sorry,
18 don't know how else to refer to it -- federal
19 proposal, but adding into the state waiver
20 process.
21 MS. KING: That's super helpful.
22 MS. BRIGGS: I think those are the

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1 three.

2 MS. PODZIBA: All right, Patrick.

3 Let's go to the next item.

4 MR. ROONEY: So the next one is going

5 to be -- there's going to be a lot of discussion

6 on it, and I'm wondering whether people might need

7 sustenance to have the energy to get through the

8 next section. I don't know if that will be easy

9 for us to break. The next piece is all on the

10 state criteria for submitting a waiver and I know

11 we'll have a lot on it.

12 It might be beneficial for us to take a

13 short lunch and then come back and start on that.

14 MS. PODZIBA: Ok, what's the minimum

15 amount of time you could take for lunch? Is a

16 half an hour too little? Forty-five minutes?

17 MR. ROONEY: Forty-five minutes would

18 seem ok to me. I defer to the others.

19 MS. PODZIBA: Let's be back at 1:15.

20 MS. KING: In the context of the

21 homework, are we supposed to be reviewing the SNS?

22 MS. PODZIBA: I think you're going to

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1 be working on this, but other people might work on
2 this.
3 MS. GOSS: An hour probably would be
4 better.
5 MS. PODZIBA: Let's take forty-five
6 minutes and see if we're willing to assess it.
7 MR. ROONEY: Obviously the same things
8 apply. There is a room, if you go out this door,
9 for negotiators. It's Room 1W105. I think you
10 can use that if you're looking for a room to talk.
11 MS. PODZIBA: The pages on Supplement
12 Not Supplant will be available in this room
13 shortly, as soon as possible.
14 (Whereupon at 12:31 p.m. a luncheon
15 recess was taken.)
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1 A F T E R N O O N S E S S I O N.

2 (Whereupon at 1:24 p.m. the Negotiated

3 Rulemaking Committee meeting resumed.)

4 MS. PODZIBA: All right, we're going to

5 reconvene, and I don't need to remind everybody

6 that we have four and a half hours -- three and a

7 half hours. We have three and a half hours. So,

8 we're going to try to work at a pretty quick clip.

9 So I'm going to ask people to make

10 their points on language and rationale for their

11 points, but try to keep other comments a bit more

12 limited.

13 Patrick, why don't you take us where --

14 I think we were doing the waivers piece.

15 MR. ROONEY: We were.

16 So this is the language from Issue

17 Paper (4)(b), but in the full package in the

18 revised part we gave you, it's in 200.6(C), which

19 starts on the bottom of Page 13, but the language

20 we want to talk about, actually it starts on Page

21 14.

22 So all of this section is around if the

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1 state has exceeded one percent and needs to ask
2 the Department for a waiver of the requirement,
3 that it assess no more than one percent of
4 students on the alternate assessment.
5 So I'll walk through first what we put
6 here, and just keep in mind that Kerri had
7 proposed something that would get added to this
8 for our consideration. That is up on the screen
9 as little (xx) for now. But I'll walk you through
10 what our proposal says.
11 So, (iv) starts on Line 27 in the
12 document in the handout, and then if the state
13 wants to ask for a waiver, there are four
14 components of what it has to ask for -- it's
15 actually five components, sorry. The first is
16 that it be submitted thirty days prior to the
17 start of the state's testing window.
18 I think Derrick raised a question
19 yesterday about what that means in implementation.
20 I think we did not make a change because I don't
21 think honestly we had a good suggestion of how
22 that addressed his point. I think our

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1 responsibility was that we would work with states
2 and figure out what that means in our context and
3 give them flexibility about what that means, but
4 not try to regulate it since it will be different
5 from state to state.
6 And then second, number (ii), romanette
7 (ii), starting on line 35, is that the state has
8 to provide state-level data from either the
9 current or the previous year. That's not new, and
10 hopefully the pieces that are here are the same.
11 So (a) is the number and percentage of
12 students in each subgroup who took the alternate
13 assessment, and then (b) is data that the state
14 has measured the achievement of at least
15 ninety-five percent of all students and
16 ninety-five percent of students with disabilities
17 subgroups in all the grades which they give their
18 assessment.
19 So we did not make any changes to (ii),
20 romanette (ii), and I think our rationale for why
21 we didn't make any changes -- and I think we spent
22 a fair bit of time talking about them -- is that

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1 these felt like foundational pieces of data for
2 the Department having to evaluate whether to
3 approve a state's request and having information
4 about the participation by subgroup is necessary
5 to help us understand what's going on in the
6 state, and then it also helps with the plan the
7 state will submit in romanette (iv) to address
8 areas of disproportionality.
9 And then (e), I know there were some
10 concerns about that yesterday. The Department
11 would feel strongly that making sure all students
12 are included in the assessment system is kind of
13 the first mark that the state has a good
14 assessment system, that they're including all
15 students in the assessment, and if they haven't
16 met that, then that should be an illuminating
17 factor for them to get this waiver.
18 Again this is a waiver from a
19 requirement that's in the ESSA, and we think that
20 (b) is a necessary safeguard for our term from
21 yesterday, to make sure that the state is doing
22 its job to include all students in the assessment.

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1 So I'm happy to talk about the rest of
2 it, if it's helpful, before we open up for
3 questions. I'm sure people have questions on
4 that. Since it hasn't changed, I'm not sure if
5 people want to spend time on it. It might make
6 sense to go through the other three pieces first.
7 MS. PODZIBA: Derrick, you were going
8 to come up with something for the testing window?
9 MR. CHAU: No, I think Patrick
10 summarized it. I had spoken with him today. I
11 think for the Department to provide Guidance in
12 support for those states, that might not be
13 accurate to determine what the ninety days would
14 be, that they can work together on that.
15 MR. ROONEY: Thanks.
16 MS. PODZIBA: Lynn, did you --
17 MR. ROONEY: No, all of this is going
18 to be in the waiver. I wanted to lay out all the
19 components before we get to the discussion whether
20 that's ok.
21 MS. PODZIBA: Ok, sorry.
22 MR. ROONEY: So then romanette (iii),

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1 which is on the top of Page 15, starting with line
2 three, this is the assurances from districts that
3 they've either exceeded one percent or that the
4 state has determined significant contributions to
5 the state exceeding the cap. This we've only
6 lightly changed from what you guys saw, what we
7 shared with you yesterday, under capital (A) on
8 lines 11 through 13. We made a conforming change
9 to the discussion we had before lunch around
10 getting rid of the definition but moving the
11 criteria into the state guidelines.
12 So, in this session, the state has to
13 assure -- the districts have to assure that they
14 followed each of the state's guidelines under
15 paragraph (D), which is what we just talked about,
16 and if you want to see it again, it's on Page 17.
17 I put both there.
18 Including criteria in paragraph (D)(1),
19 romanette (i) through (iii), I think depending on
20 how the resolution to the discussion before lunch
21 happens, we would change that to be (i) through
22 (iv) if there were four criteria.

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1 We just made that consistent with one
2 another. But because we've removed the definition
3 and we've created criteria that states should
4 consider when they're creating their own
5 definition, we thought it was useful to -- we
6 thought it was important to specifically reference
7 those criteria as they're thinking about how those
8 guidelines are being implemented.
9 That's the change we made to romanette
10 (iii)(A). And then, that's the only change in
11 romanette (iii).
12 Under romanette (iv), starting on line
13 27, this is where the state, as part of its
14 request, has to submit its plan and timeline, and
15 again, we made a similar change starting on lines
16 thirty and thirty-one. You can see the underlying
17 text.
18 So, in the previous version, the state
19 had to provide a plan and timeline for how it was
20 improving implementation of its guidelines under
21 paragraph (D), that same section we talked about
22 before lunch, and again, because we removed the

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1 definition and added the criteria under (D)(1),
2 that we included similar conforming language that
3 talks about how the state's plan is going to
4 address reviewing the state's definition for "most
5 significant cognitive disabilities" and, if
6 necessary, revising its definitions under
7 paragraph (D)(1) of this section.
8 So that again is the discussion we had
9 right before lunch.
10 And the, there's one other change that
11 I will mention in these guidelines, and then we
12 can open up for discussion.
13 If you turn to Page 16, romanette (v),
14 starting on line 13, this language is the same as
15 the language that you saw yesterday, with one
16 change: We added the word "substantial" on line
17 15.
18 So, if the state is requesting to
19 extend the waiver for an additional year, it must
20 meet the requirements addressed in paragraph
21 (1)(4) -- (C)(4). That's the previous waiver
22 requirements. So if the state comes in for an

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1 additional year, it must meet the previous
2 requirements we just talked about, plus it must
3 show substantial progress for achieving each prior
4 year's plan and timeline.
5 So we made it substantial to be clear
6 that it is our position that it is taking
7 substantial steps to address any
8 disproportionality that's occurring in the state,
9 that it is revising, if necessary, the state's
10 definition for "most significant cognitive
11 disability" to make sure it is moving toward
12 coming into compliance and not assessing more than
13 one percent of students on the alternate
14 assessment.
15 So, now I'll stop.
16 MS. PODZIBA: Ok, open up for
17 discussion for the waiver section.
18 Alvin, just tell us what page and line
19 you're on.
20 MR. WILBANKS: Ok, it's Page 13 -- I'm
21 sorry, Page 14. It starts at line 27. We're
22 recommending that romanette (i) be retained.

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1 Strike romanette (ii). Retain (A). Strike
2 romanette -- I'm sorry, strike (B) under romanette
3 (ii), and then on Page 15, under romanette (iii),
4 strike (iii), but make that with the (iii)(A) --
5 I'm sorry, strike (iii) and (A) --
6 MS. PODZIBA: Romanette (iii) --
7 MR. WILBANKS: No, retain (A). Strike
8 romanette (iii) and then make (A) as romanette
9 (iii).
10 Under romanette (iii), (B) will be
11 retained. On line 22, (C), strike.
12 Line 27, retain that but strike through
13 the wording under line 31, so that the state meets
14 the cap.
15 And then on Page 17 --
16 MS. PODZIBA: We're not at Page 17 yet,
17 so let's hang on on that.
18 MR. WILBANKS: I'm sorry, Page 16. On
19 line eight, strike (iii) -- (C), (C), I'm sorry.
20 I can't read my own paper.
21 MS. PODZIBA: Well, that's quite a
22 proposal. I'm sure there are people around the

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1 table who have something to say about that. Could
2 you give your rationale?
3 MS. KING: Sorry, is it possible just
4 to do the whole thing again? If everybody else
5 got it, then I'll defer.
6 MR. HAGER: I need help.
7 MS. KING: Or the rationale first. I
8 wasn't able to write down all of it.
9 MR. WILBANKS: Ok, you want me to go
10 through it again?
11 MS. PODZIBA: Sure.
12 MR. WILBANKS: Retain (iv) romanette --
13 MS. PODZIBA: You know, what, maybe
14 it's easiest if you give us the page numbers and
15 line numbers.
16 MR. WILBANKS: Ok, Page 14, line 35,
17 romanette (ii) strike, line 41, (B), strike.
18 Which one did I say? No, I want to
19 retain -- the subgroup to (A) is what I want to
20 retain. That is (A), line 37 (A).
21 Going on down to line 41, strike (B).
22 Go to Page 15, line 3, strike romanette

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1 (iii). Retain (A) as (iii), romanette (iii), and
2 then strike -- on line 14, strike (B).
3 On line 22 -- I'm sorry, I did not mean
4 to say -- retain (B).
5 On line 22, strike (C). Romanette
6 (iv), retain, but strike through so that the state
7 meets the cap. And on Page 16, line eight, strike
8 (C).
9 MS. PODZIBA: Ok, could you tell us
10 your rationale for that proposal?
11 MR. WILBANKS: First of all, I think
12 there's too much up there that needs to be done
13 that will get shifted -- generally anything the
14 state has to do gets shifted down to the district.
15 Some things we could do, the subgroup.
16 We could keep those in the student data to the
17 district. Also do away with the
18 disproportionality references.
19 And that's the primary reason. I could
20 go into a long thing, but that's the primary
21 thing.
22 MS. PODZIBA: Ok, let's open up for

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1 discussion.

2 Liz?

3 MS. KING: I mean, I was going to

4 ask -- I had a proposal to include stronger

5 disproportionality language, which I think I will

6 reserve and not present at this moment, but

7 just -- frankly, I think I need to think for a

8 minute.

9 MS. PODZIBA: Delia?

10 MS. POMPA: I'd like to ask about your

11 rationale, because your rationale as I understood

12 it was to leave a lot of this down to the LEA.

13 This requirement is a state requirement, however,

14 and it sounds like you're taking a lot of

15 responsibility of the state off the table in their

16 reporting.

17 Do I misread that?

18 MR. WILBANKS: I think, again, the

19 requirements that the states have, those

20 requirements come down to the state, and I just --

21 I told you how I feel and that's how I feel.

22 MS. POMPA: I wasn't questioning how

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1 you feel. I was asking your rationale whether it
2 should go down the LEA level. But it's not the
3 LEA's responsibility. It's the state's
4 responsibility.
5 MR. WILBANKS: You could make that
6 case --
7 MS. POMPA: Well, I think the law makes
8 that case.
9 MR. WILBANKS: Well, again, the state
10 gets much of its data from the district.
11 MS. PODZIBA: Ron?
12 MR. HAGER: I would just make the kind
13 of comment in principal I guess is the best way to
14 put it.
15 When we began the discussion the first
16 time we were here, we talked about general kind of
17 operating principals, and generally of the ones
18 that we had, this is a waiver, so this is the
19 state is feeding its requirement to only assess
20 one percent of the students under the alternate
21 assessment, and once a student is in that track,
22 it's a significant consequence of that student.

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1 So we don't -- we want to try and have
2 some real teeth behind that provision of really
3 keeping the assessments within that one percent.
4 One of the ways we can do that is, you
5 know, to make it -- make it robust requirements
6 for a waiver. This is a waiver of a requirement
7 that's in the ESSA. Yeah, you had a provision to
8 seek the waiver, but we want to have some
9 significant assurances about how the state is
10 going to be moving away from this -- -- moving
11 toward compliance.
12 So, just as a matter of principal, to
13 kind of gut -- I'll use that phrase again, gut the
14 provisions that are proposed in the waiver, is of
15 significant concern to us.
16 MR. WILBANKS: It will be impossible
17 for the state to stay within the one percent if
18 the districts don't, and I don't want any student
19 that doesn't need to take that assessment to take
20 it. But I do think that there are extenuating
21 circumstances for perhaps districts. Schools will
22 need to exceed that, and it just seems to me

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1 that's problematic.

2 MS. PODZIBA: Audrey.

3 MS. JACKSON: With all due respect,

4 Alvin, I feel like the proposal includes a lot of

5 text that we have worked on in good faith over the

6 previous sessions, especially those in gray and in

7 the last hours. I'm just wondering why it's

8 coming out now that -- not every single thing, but

9 some of the things that have been there for a

10 while.

11 MR. WILBANKS: Was that a question,

12 Audrey?

13 MS. JACKSON: I guess I'm just aware of

14 the ticking clock, and there was -- just as we

15 proceed, if we're now going back into things that

16 we had agreed upon to cut them, what the rationale

17 is behind doing so now.

18 MR. WILBANKS: Very good question, and

19 I think the discussions that we've had with the

20 people I represent, this is problematic.

21 MS. PODZIBA: Ok, is there further

22 discussion of the proposal?

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1 Liz?

2 MS. KING: I think I'll just add that

3 the cutting of the disproportionality, even

4 reporting on disproportionality, is especially

5 disconcerting. I mean, there's a long, long

6 history of children with disabilities being

7 excluded from schools, and since 1975 there's been

8 federal law trying to address that, and we know

9 that even among children with disabilities,

10 low-income children with disabilities, English

11 learners, children of color with disabilities, as

12 just reported, are likely to be excluded from the

13 classroom.

14 And I sort of second Audrey's concern

15 about, Why all of a sudden? But I totally

16 understand the challenge of dealing with the

17 diverse constituency.

18 But I just -- I just wanted to

19 particularly flag the importance of

20 disproportionality. We would like action on

21 disproportionality. We would like very strong,

22 aggressive language around disproportionality, but

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1 just to cut the reporting on disproportionality is
2 really hard to swallow.
3 MR. WILBANKS: Well, first of all, this
4 was something we wanted to present yesterday but I
5 couldn't do it. There was so much conversation
6 that goes on and on, and you have so many people
7 talking at one time. So this is the first chance
8 I got.
9 MS. PODZIBA: Ok, is there further
10 discussion of the proposal?
11 Janel?
12 MS. GEORGE: Sure. I just wanted to
13 applaud -- we've had a lot of conversation
14 throughout our sessions with Congressional intent
15 in insuring that it's consistent with the
16 Congressional intent of the law. I think this is
17 central to that intent, and I, unfortunately, am
18 really disappointed.
19 I think we've all been here negotiating
20 and giving our time in good faith, and this really
21 undercuts the intent of this.
22 MS. PODZIBA: Is there any dissent from

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1 this proposal?

2 (Dissent from the committee.)

3 MS. PODZIBA: So that proposal doesn't

4 work.

5 MS. GOSS: I'm not dissenting.

6 MS. PODZIBA: Ok, new item.

7 MS. GOSS: So I would go back to what

8 was original, but then I would just like to -- on

9 Page 14, go back to what was original and just

10 strike line 41, all of (B).

11 MS. PODZIBA: Ok, and could you

12 describe your rationale for that?

13 MS. GOSS: So under the law as written

14 a state decides what the ramifications are, and

15 they should not be subject -- we should not be

16 subjecting our kids to arbitrary tasks. These

17 decisions should be made by the IEP team who knows

18 the kids best.

19 Eliminating the ninety-five percent as

20 a precondition for the one-percent waiver is about

21 allowing a maximum flexibility for educators to

22 make the best decision for students with their

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1 parents at the IEP table instead of being caught
2 up in the arbitrary percentages.
3 Congress did not intend for these two
4 prohibitions to connect here.
5 MS. PODZIBA: Ok, so the proposal is to
6 delete (B) at the bottom of Page 14.
7 Patrick?
8 MR. ROONEY: So the Department would
9 not be comfortable with that. I appreciate that
10 the accountability provision for including the
11 participation rate is different than this
12 provision of what we're discussing here, and
13 states have discretion in terms of how they
14 calculate participation rate.
15 However the state, in their assessment
16 system, needs to make sure they're including all
17 students in their assessment, and this is about
18 providing a waiver, some additional flexibility
19 for states to not meet a component of the ESSA.
20 For that reason we think having all or
21 nearly all of their students for the all-students
22 group and for the children-with-disabilities group

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1 included in the assessment system is a fundamental
2 point that the state needs to insure is happening
3 in order to get this additional flexibility. And
4 we do feel pretty strongly that this should remain
5 in the proposed regulation.
6 MS. PODZIBA: It sounds like there's
7 going to be dissent on that proposal, but I'll
8 just formalize it.
9 Is there a dissent on that proposal?
10 Yes.
11 Lynn, do you have another comment or
12 another item?
13 MS. GOSS: No.
14 MS. PODZIBA: Are there other items on
15 this section?
16 Liz?
17 MS. KING: Yes. I wanted to propose on
18 Page 16, line 17, we had expressed the concern
19 about the Department's removal of the
20 disproportionality precondition, and so in the
21 spirit of offering an alternative, just for the
22 record, we would prefer disproportionality as a

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1 precondition for a waiver, but in the interest of
2 offering a compromise, we'd like to add, after
3 that romanette (iv), so it will read, "timeline
4 required" under paragraph (c)(4)(iv), and new
5 language, "including that there was no
6 disproportionality in the assessment of any
7 subgroup of students in the first year of the
8 waiver as measured under (c)(4)(A)".
9 MS. PODZIBA: Can you repeat that?
10 MS. KING: Sorry, including that this
11 was no -- line 19. I'm starting in the middle of
12 the sentence, sorry. That's why it's confusing.
13 So you see the romanette (iv)?
14 MR. HAGER: Is it the middle one?
15 MS. KING: No, it's right where she
16 was. Go back to that. There you go.
17 So my new proposal language would be,
18 "including that there was no disproportionality in
19 the assessment of any subgroup of students in the
20 first year of the waiver as measured under
21 (c)(4)(A)". So it's little (c), Arabic (4),
22 capital (A). Thanks.

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1 MS. PODZIBA: Ok, and can you give your
2 rationale for that?
3 MS. KING: Yeah. I mean, we've been
4 having some back and forth conversation about
5 whether we can be comfortable with a waiver at all
6 that allows for a disproportionality when the
7 waiver is granted. But this is an effort to try
8 and make progress towards that.
9 So you could get a first-year waiver
10 with the disproportionality in your placement of
11 children in the alternate assessment. You could
12 not get a second-year waiver.
13 So this is providing additional
14 flexibility, given the Department's discomfort in
15 having this with a precondition of any waiver at
16 all, but then not allowing for a state -- I
17 understand the substantial progress language here,
18 but we are deeply uncomfortable with allowing a
19 state to continue to disproportionately assess
20 some groups of students using the alternate
21 assessment.
22 MS. PODZIBA: Lynn, is your comment on

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1 this proposal or it's a new item?

2 MS. GOSS: A new item.

3 MS. PODZIBA: Patrick.

4 MR. ROONEY: I just have a clarifying

5 question at this point.

6 As I read this, the state prospectively

7 asks for the waiver. So the state will say in

8 September, say, in the spring that's coming up,

9 We'll need a waiver because we're going to assess

10 more than one percent of students. In order to

11 then get extended, the state will have to, in that

12 spring administration, have addressed and resolved

13 any disproportionality.

14 So, in the space of ninety days between

15 when they ask for it and when they get it, is that

16 what you intend?

17 MS. KING: Theoretically, yes. If

18 there is a better way to write it. The concern, I

19 mean, may be because of the prospect, maybe you

20 then have to allow for two years of waiver. I

21 understand what you're saying.

22 I think that the idea here, the

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1 assumption we've all been working on is that since
2 2002 states have been working on this, right, and
3 that under the new requirements of this new law
4 that hopefully states are working on right now,
5 when the law comes online, that they'll be
6 compliant, right? That's our expectation.
7 The states want to follow the law. The
8 law says in 2018 you may not assess more than ten
9 percent of all students. As they are continuing
10 to make progress, I surely hope that when they
11 submit it, even if they submit a waiver request in
12 the first year saying, We expect to exceed the
13 cap, that as they are making progress on that,
14 they are addressing as part of insuring compliance
15 with the one-percent cap, and then only those
16 children with the most significant cognitive
17 disabilities, then they are only addressing
18 disproportionality. The problem is that
19 "substantial progress" in applying that same
20 timeline. So you will have to show that you made
21 substantial progress between September and March.
22 So what I would like to be able to say

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1 is that, not that you've made substantial
2 progress, but that you've addressed the problem.
3 So that's what I'm trying to do here.
4 MS. PODZIBA: Kerri?
5 MS. BRIGGS: I have a question about
6 this proposal.
7 So essentially it assumes that there
8 was no disproportionality when the waiver was
9 first granted? That's how I read it. Because
10 you're saying there was no disproportionality in
11 the first year of the waiver?
12 MS. KING: Right, sorry. So that you
13 get the waiver -- I mean, this is the timeline
14 problem again. You get the waiver in advance of
15 providing the assessment. If there was a
16 disproportionality, then I do not think you should
17 be eligible for a second year of waiver. You can
18 be eligible for a first waiver, but you can't be
19 eligible for a second waiver with the
20 disproportionality.
21 MS. BRIGGS: That's not how I read it.
22 MS. KING: Totally, that's what I'm

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1 trying to do. Yeah, if that's a better way to
2 write it, I'm totally open to that.
3 MS. PODZIBA: Patrick?
4 MR. ROONEY: A second clarifying
5 question... I'm trying to figure out how this new
6 language interacts with (c) right above it, which
7 is part of the state plan. So the state has to
8 come up with a plan for how it will address
9 disproportionality as part of its request.
10 So, in year one, the state is going to
11 say, you know, We need to assess 1.2 percent of
12 our kids on alternate assessment, and here's our
13 data; Here's how we tested all kids; Here's our
14 assurances from the LEA; Here's our plan and
15 timeline, and part of our plan and timeline is how
16 we're going to read disproportionality.
17 I read (iv) to say their plan to
18 address disproportionality needs to be completed
19 before that actual test is administered for which
20 we're giving them a waiver.
21 MS. KING: All the data you're saying
22 they submitted was from the prior testing year,

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1 right?

2 MR. ROONEY: No, it could be prior or

3 current is what we voted. I think in the last

4 section Tony talked about using current data. So

5 we left it to the District, and we know if we're

6 going to assess more than one percent, we need a

7 waiver. And this would show how the plan and

8 timeline has to show how they will have done it

9 between when they submit the waiver and between

10 when we approve them for the waiver, and I'm

11 wondering how the Department would operationalize

12 that and kind of hold states to it.

13 MS. KING: Right, and I want it to be

14 meaningful. So if it's just absurd that that's

15 not helpful and not meaningful, I suppose then you

16 could say the second year of the waiver. I think

17 you're going to have all of the same problems in

18 terms of -- I'm a little bit nervous what

19 "substantial progress" means, if this is so much

20 different than that.

21 MR. ROONEY: I haven't thought about

22 this or talked to anyone about this, but if you

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1 put a timeline end point within (c), would that
2 help address your point, that it can't be -- that
3 a plan to address disproportionality could last
4 forever, but that there be some additional
5 clarification about what that should be in (b) and
6 (c) that would address this point?
7 MS. KING: I mean, the problem is, they
8 may have a small disproportionality, right? It
9 may be that there was a glitch in the advice they
10 were providing and almost no English learners were
11 assessed on the alternative assessment, right,
12 which would be an underrepresentation. And, so it
13 may be a small disproportionality that could be
14 addressed, or it may be a large disproportionality
15 that could be addressed.
16 I think one of the challenges is we
17 don't have this data, so we don't know.
18 The problem with just adding a time is
19 that you could have an arbitrary cutoff that makes
20 a limited amount of progress in that small amount
21 of time, right? You could have a massive gap,
22 massive overrepresentation of African-Americans in

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1 the alternative student assessment for example,
2 and then say we're going to go from making a
3 massive overrepresentation of African-American
4 students to only a very large overrepresentation
5 of African-American students, and there is nothing
6 in here that I read about that.
7 MS. PODZIBA: Kerri.
8 MS. BRIGGS: I don't know that a year
9 would be any less arbitrary. I feel like at some
10 point, like you said, I think you have to defer to
11 the state to figure out what the caution of the
12 disproportionality is and give them the space to
13 remedy it, knowing that the Department is going to
14 need some parameters for helping states come into
15 compliance with this.
16 I mean, absent a waiver, if they're
17 assessing one percent, what do they do? You have
18 to do something. And so I just feel like a year,
19 two years, whatever, there's going to be judgment
20 brought to a discussion to figure out how to
21 resolve it.
22 MS. KING: So the reason I don't think

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1 it's arbitrary is that the whole idea here is that
2 you have to go through a process, right? Because
3 there are times when it is appropriate to grant a
4 waiver. There are times when there may be a
5 perfectly defensible explanation to why there was
6 an exceeding of the cap. And those are different
7 from the times in which what was happening was a
8 structural denial of opportunity, which resulted
9 in exceeding a cap.
10 And so in the event -- so you go in for
11 year one, you request a waiver, then you go in for
12 year two. I think in the context of that second
13 process that you demonstrate that you addressed
14 that problem. So, yeah --
15 MS. PODZIBA: Liz, I'm going to just
16 see if there is consensus on the proposal.
17 Is there any dissent on this proposal?
18 Yes? Ok.
19 All right, new item.
20 Lynn. Did you have a new item?
21 MS. GOSS: Yes, I do.
22 Ok, I want to go back to Page 14 and I

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1 have another proposal.

2 MS. JACKSON: Can we get a different

3 mic.

4 MS. PODZIBA: I think that your mic's

5 not working, so could someone pass this around.

6 We don't need that one.

7 MS. GOSS: So, under (b) I'd like to

8 strike "the state has measured" and insert "the

9 effort the state has made to measure".

10 MS. PODZIBA: Ok, and can you give your

11 rationale for that change?

12 MS. GOSS: That just gives the states

13 the flexibility to --

14 MS. PODZIBA: Ok, increases flexibility

15 for states.

16 So is there a discussion for this

17 proposal?

18 So Tony, I'm assuming you have a new

19 item?

20 Marcus, do you have --

21 MR. CHEEKS: I have a question to this

22 last proposal.

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1 MS. PODZIBA: Ok.

2 MR. CHEEKS: Patrick, changing that

3 language, how would that impact the

4 ninety-five-percent assessment requirement for

5 states in general?

6 MR. ROONEY: So these are not related

7 to one measure. So the accountability system and

8 what the state does with the participation rate in

9 the accountability system was that it's totally

10 separate and unrelated to this discussion.

11 So this is about, if the state wants a

12 waiver, how many kids in the one-percent cap of

13 kids taking the alternate assessments and what are

14 the criteria that the state has to show that it's

15 including all students in its assessment system,

16 and all children with disabilities in its

17 assessment system.

18 It does not interact with the

19 disability system, which is done by the state,

20 which is what we're discussing in this negotiated

21 session.

22 MR. CHEEKS: I guess my question is, is

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1 it possible that it could be discerned as such?
2 Could someone read it in this area and interpret
3 the latter?
4 MR. ROONEY: So, possibly. I mean,
5 clearly we spent a bunch much time in the last
6 three sessions. We kind of talked about, it's
7 getting a little bit confused between the
8 requirement in the assessment system to test all
9 kids and the accountability system and the
10 language about how participation rates are
11 included in the accountability system.
12 I think it's possible that might
13 happen. I don't think we could anticipate what
14 would that be.
15 MR. CHEEKS: And I guess my rationale
16 for asking is about not creating more confusion by
17 adjusting this language to not be consistent with
18 the accountability piece.
19 MR. ROONEY: I mean, I will defer to
20 others on what they think about that. I will
21 defer to the Department for that.
22 MS. PODZIBA: Kerri.

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1 MS. BRIGGS: So on that proposal I
2 think effort was a little bit clearer, the
3 ninety-five percent. I think effort would be an
4 iron-holder, to the extent that Tony is calling,
5 and as complicated as this might be, at least it's
6 clear. It's a data question, and you have it or
7 you don't. That doesn't help for clarity. Effort
8 might be contributing.
9 MS. PODZIBA: So I'm hearing some
10 dissent to this proposal. Rather than having a
11 full-blown discussion, is there any dissent from
12 adopting this proposal?
13 Tony, you have a new item?
14 MR. EVERS: Clarification. Well, first
15 of all, and I know you don't want extraneous
16 stuff, but I have deep concerns over the breadth
17 and depth of this waiver request. It's worse than
18 getting a waiver on No Child Left Behind. That
19 said, I have a question for Kerri...
20 On page -- where is it, Page 15,
21 line -- used to be line 29. I think it may still
22 be line 29, but "including by reviewing and if

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1 necessary revising this definition," blah, blah,
2 blah...
3 Does that fit your issue, instead of
4 plopping in a bunch of stuff here? Does that work
5 for you? If it does, that takes us down to two
6 alternatives for this and for the definition.
7 MS. BRIGGS: I mean, I think this is
8 one idea, sure. I think I was imagining, when I
9 offered up the idea, that it was the broader
10 definition, because I felt like just trying to
11 bring two groups of people together. So I
12 appreciated the original proposal as it was.
13 But the suggestion was like, if you
14 want to try to bring a couple of people -- a
15 couple people together, maybe that's the way to do
16 it.
17 MR. EVERS: So we have no -- so we now
18 have four proposals.
19 MS. PODZIBA: Four proposals for --
20 MS. BRIGGS: Because this is just
21 recognizing that the state has to have those three
22 proposals in its guideline. The assumption is

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1 that, without a one-percent cap or guideline, the
2 waiver becomes a definition, so I guess it's a
3 little more prescriptive at the local level.
4 MR. EVERS: I'm sorry, are we talking
5 about the same thing?
6 MS. BRIGGS: I think so.
7 MS. PODZIBA: Tony, are you making a
8 proposal for where to put that concept that there
9 would be --
10 MR. EVERS: Well, to me, this concept
11 on this line, plus what the Department originally
12 proposed today, seems to be a reasonable solution
13 to the definitions. So, to me that's a solution,
14 but we're going to have to go back to the
15 definition of --
16 MS. PODZIBA: I think I'm just missing
17 something. What's the solution? That these words
18 as they are --
19 MR. EVERS: Isn't that what the intent
20 was?
21 MR. ROONEY: Yes, I think that's why I
22 put the pin in the conversation when Kerri

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1 proposed it. What we proposed here, that Tony has
2 just pointed to in (4)(a) on lines 29 through 31,
3 kind of gets to the same idea but does it in a
4 different way than Kerri's suggestion of, instead
5 of saying that you need to exceed one percent,
6 then you have to then use the definition that we
7 previously proposed in (e), that this says states
8 have to define it, and if they have gone over the
9 one percent they need to review and potentially
10 revise their definition, which still leaves that
11 with the state.
12 That is the difference between I think
13 what Kerri is proposing and what's I think on the
14 page in front of us.
15 MS. BRIGGS: And I would have inserted
16 the more extraneous waiver process.
17 MS. PODZIBA: Should we talk about that
18 now, or should we wait until we have the full
19 conversation about the earlier guidelines?
20 MR. ROONEY: So I'd be in favor of
21 talking about that now. I think it probably would
22 be helpful while we're talking about the waiver

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1 criteria. Other than that, I think that's,
2 MS. PODZIBA: Ok, so, if I understand
3 what this paragraph does is it makes the waiver
4 dependent upon the state's definition that they
5 have created subject to the guidelines that we
6 were discussing earlier.
7 MR. ROONEY: So earlier the states had
8 to define the definition, and there's some
9 criteria of things they have to take into account.
10 MS. PODZIBA: Right.
11 MR. ROONEY: Here, if they have
12 exceeded one percent, as part of their plan, they
13 need to review and revise, potentially revise, if
14 necessary, all of their guidelines, including
15 their definition.
16 MS. PODZIBA: Ok, so I guess the
17 question is, does this do enough I guess is the
18 question.
19 Kerri, do you feel like that does what
20 you were trying to propose in your proposal?
21 MS. BRIGGS: I'm good with it, but
22 again I'm sympathetic to what Ron and Liz and

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1 others have been trying to provide more clearly
2 around this definition.
3 MS. PODZIBA: If they're good with it,
4 you're good with it?
5 MS. BRIGGS: Yes.
6 MS. PODZIBA: Mary Cathryn?
7 MS. RICKER: I have a question in
8 inserting this in the waiver process, too.
9 I'm wondering if I can get
10 clarification on what the law says can govern the
11 waiver.
12 MR. ROONEY: Sorry, Mary Cathryn, are
13 you asking about what are the requirements for a
14 state to request a waiver?
15 MS. RICKER: What did the law say can
16 be governed in a waiver? Like what's applicable
17 to being put into a waiver requirement and what
18 is --
19 MR. ROONEY: So I'm going to turn that
20 to our legal counsel, Kay. Feel free to do a
21 little light reading from the statute.
22 (Brief pause.)

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1 MS. RIGLING: All right, it has to
2 identify the federal programs affected, describe
3 the federal statutory or regulatory requirements
4 to be waived, describe how waiving the
5 requirements advances student academic
6 achievement, describe the method the LEA, school,
7 or Indian tribe will regulate to evaluate
8 effectiveness and include other information
9 directly related to the waiver request, and
10 describe how schools will continue to provide
11 assistance to the same population served by the
12 program for which the waiver is requested.
13 MS. PODZIBA: Does that get at your
14 question?
15 MS. RICKER: Yeah, so this is what can
16 be in it. Is there anything that also just talks
17 about prohibitions as to what can be consideration
18 to get a waiver?
19 MR. ROONEY: I think what you're
20 probably referring to, and let me find the exact
21 language, we "cannot require as a condition of
22 approval the state to include or delete from the

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1 specific academic standards, use specific academic
2 assessments, include or delete from specific
3 elements of state academic standards or
4 assessments, or accountability systems or teacher
5 eval".
6 There is another provision that I'm
7 thinking of where it says that you could add a
8 company that's unrelated to the waiver request.
9 I'll find that in a minute: "second, shall not
10 disapprove a waiver based on conditions outside
11 the scope of the waiver request".
12 We would obviously argue that these are
13 not outside the scope of the waiver request. In
14 fact they go directly to the whole purpose of the
15 waiver.
16 MS. PODZIBA: Ok, so I don't have any
17 proposals on the table right now. It's discussion
18 of what's on the page.
19 So, Patrick, I'm going to ask you to
20 just keep going forward.
21 MR. ROONEY: So that's the end of
22 200.6(C).

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1 MS. PODZIBA: Right.

2 MR. ROONEY: The next thing, and this

3 is actually the last component for us to talk

4 about, is the locally-selected

5 nationally-recognized assessments from 200.3. It

6 was Issue Paper 3, but in the full package you see

7 it on Page 6. So there were a couple of questions

8 that were left on the table at the end of

9 yesterday, and before I go into the pieces that

10 are bolded, I think I went and set a little bit of

11 context, because we didn't make many changes to

12 this, this language that you see in front of you.

13 I think maybe we weren't all thinking about this

14 the same way, so I'll explain about how I was

15 thinking about this and the Department was

16 thinking about this component of the law to try to

17 help frame the discussion before I explain the

18 language.

19 We think that this is a narrow

20 exception from the general requirement that states

21 have assessment systems and that they use the same

22 assessments to measure the knowledge and skills of

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1 all students in the state for districts, that have
2 high school assessments that they want to use,
3 nationally-recognized high school assessments that
4 they may already be offering or may want to offer
5 to their students that help ease some of the
6 testing pressure in the schools, that provides a
7 particular benefit to the student and for that
8 reason it may offer that in place of the state's
9 assessment.
10 But what this is designed for should be
11 a nationally-recognized high school academic
12 assessment in that -- you know, I said this
13 yesterday, and I think I said this in session two,
14 that the term "nationally-recognized" has meaning
15 and it does mean more than just administered in
16 multiple states; that there should be a particular
17 benefit to the student that can be identified,
18 which is why we drafted the definition that we did
19 and why we actually made slight changes to it in
20 the version after the discussion yesterday.
21 But, it looks very similar to the
22 discussion, and after talking internally, we did

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1 not feel comfortable with the suggestion that
2 Thomas had made in the conversation yesterday.
3 I think some of the conversation we
4 had, people are talking about performance tasks,
5 or competency assessments. We're trying to look
6 at assessments in a slightly different way than we
7 were thinking about nationally-recognized high
8 school assessment.
9 I did want to point out that the law
10 has a component, which we're not discussing
11 because it's not part of the Title I Part A
12 Assessments, so it wasn't part of the scope for
13 our negotiated rulemaking session, but there was a
14 section in the new ESSA that does provide for an
15 innovative assessment pilot where states can apply
16 for districts or, you know -- I don't know what
17 the rules might be, but even potentially pockets
18 of schools within districts to apply to try
19 something really new and innovative that gets away
20 from a traditional state end-of-year assessment.
21 That assessment could be given multiple
22 times during the year. It could be performance

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1 tasks. It could be a competency-based assessment.
2 It could be imbedded curriculum or games. The cap
3 is very open to that in terms of piloting
4 different types of assessments, and that authority
5 exists in the new ESSA, and states kind of apply
6 for it, and it's not part of what we're talking
7 about, but it does exist.
8 This is really about locally-selected,
9 nationally-recognized high school assessments,
10 which is why we probably drafted a somewhat
11 narrower definition.
12 I think that, because the requirement
13 is that states have a statewide assessment system
14 that they're applying the state standards to all
15 kids and holding kids to the same expectations,
16 that, within this component, if districts are
17 going to accept -- going to use this, then it
18 should be a districtwide decision to do that. So
19 that way, at the very least, we have comparable
20 information across all high schools in the
21 district on how they're performing, so parents and
22 the public can have that consistent information on

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1 which to make decisions.

2 I appreciate the point Mary Cathryn

3 made yesterday and others have made that the

4 borders between one district to the next can be as

5 across a street. It's never a perfect decision on

6 how that's going to work.

7 But I do think, because this is a

8 locally-selected decision for a

9 nationally-recognized high school assessment, that

10 that is the bounds that they can get to operate

11 under, that a district can make that decision for

12 itself, so long as the state approves it. And

13 they have to then -- it has to be applied across

14 the district so you have that comparable

15 information.

16 So I did want to set that frame out as

17 we start, because we didn't make all of the

18 changes and I wanted to try to shape the rationale

19 for that.

20 If you look, there are three pieces

21 that are not bolded, one of which we talked about

22 already, so we don't need to go through it. But

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1 on number (2), this is the requirement -- sorry,
2 on Page 6, line 12, this is the requirement that,
3 "If a district chooses to administer a
4 nationally-recognized high school assessment as
5 approved by the state, it must administer the same
6 locally-selected, nationally-recognized assessment
7 to all high school students in the LEA".
8 We did add the exception that I think
9 Rich had made yesterday that, except for students
10 with the most significant cognitive disabilities,
11 who are assessed in an alternate assessment, that
12 aside from that, all the other students in the LEA
13 would take this nationally-recognized high school
14 assessment.
15 And then the other piece is on Page 8,
16 the definition, and I think there's actually one
17 in front of me, some language we might have
18 forgotten to accept.
19 So the definition is primarily the same
20 as the one we shared with you yesterday morning or
21 last week when we sent the document. I think the
22 one change that was recommended yesterday is that

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1 the word "accepted" in line 36 could be changed to
2 "recognized". I do think that we still need the
3 second half of that sentence about, "recognized by
4 institutions of higher education in those or other
5 states for the purpose of entrance or placement
6 for post-secondary education and training programs
7 or courses of study".
8 Again that's because we think
9 "nationally-recognized" has a particular meaning
10 that we need to define, and that "entrance or
11 placement in a post-secondary education or
12 training program" is an important distinction to
13 place on this definition.
14 MS. PODZIBA: Ok, so we're looking at
15 those two sections, and are you suggesting that
16 what's on Page 7 we've already worked on?
17 MR. ROONEY: When I made us jump
18 between three different sections, I apologize for
19 that, but that's the -- we did talk about that
20 earlier, before lunch.
21 MS. PODZIBA: Richard?
22 MR. POHLMAN: Sure, thanks.

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1 Patrick, I want to just either clarify
2 on the record or get some more language in here
3 around preserving the ability of LEAs or for
4 states to first approve and then for LEAs to
5 select assessments that other states may be using
6 for accountability that also measures college
7 readiness.
8 So I'm wondering if there's -- I hear
9 exactly what you're saying, and I think that that
10 may be part of the reason why the change -- or
11 from (iv) to what was in line 35. I think that
12 was a change. I don't remember. I can see where
13 that may be important.
14 I'm wondering if then, in line 37, we
15 have other states for the purposes of determining
16 college readiness, entrance or placement into
17 courses of post-secondary education or training
18 programs so that we're expanding this to not just
19 be something where we're looking at an exam that
20 may be used for the purposes of college credit or
21 college entrance, but rather looking also and
22 extending that to college readiness if we have an

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1 exam in a particular state.

2 I know that several different social

3 groups that have developed assessments, those

4 assessments are being accepted or in the

5 transition, and I just want to clarify that maybe

6 you meant to include those here, but I want to

7 clarify that those would be included as something

8 that a state may offer LEAs may select from, if

9 the state so chooses.

10 MS. PODZIBA: Ok, discussion of that

11 proposal. I see a number of heads nodding.

12 Patrick?

13 MR. ROONEY: I will clarify that I

14 think the Department has tried to balance between

15 the two groups and assessments. Many districts

16 are using one of those. There are places of

17 higher education that are accepting for placement

18 both of those assessments. So the current

19 definition actually, that would fall in the

20 category that fit this definition, along with

21 several other assessments.

22 MS. PODZIBA: Lara?

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1 MS. EVANGELISTA: I have another
2 proposal, but I also want to talk about Richard's
3 proposal. I agree, but I would add "college and
4 career readiness".
5 MR. POHLMAN: That's great.
6 MS. PODZIBA: Ok, Lara. I'll get you
7 for the new item.
8 Any further discussion of the proposal
9 to add "determining college and career readiness"?
10 Any dissent from that proposal?
11 Ok. Patrick.
12 MR. ROONEY: Sorry, I might need to
13 check with some of my colleagues before I say yes.
14 I was reading language at the time. I think I
15 might need to confer with some of my colleagues
16 before I can say that we would agree to that.
17 MS. PODZIBA: Do you want to take a
18 minute now?
19 MR. ROONEY: Is that ok?
20 MS. PODZIBA: Yeah, why don't you do
21 that.
22 (Recess taken.)

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1 MS. PODZIBA: Ok, if everyone can
2 return and take their seats, we'll return from our
3 break.
4 Patrick, you surprised me. I thought
5 you were going to turn around and just ask for
6 advice.
7 MR. ROONEY: I thought so, too. I'm
8 making stuff up as I'm going along.
9 MS. PODZIBA: At least we're on the
10 same page.
11 MR. ROONEY: That was my original plan
12 and it worked. I apologize for that.
13 Thank you for indulging me for doing
14 that. I have a question for Rich, who raised
15 this, and for others, whoever feels they could add
16 to it. We were just talking about it for a
17 second...
18 The additional language with
19 determining college readiness, I think I'm
20 struggling a little bit with figuring out what
21 that means as a part and separate from entrance or
22 placement in the sources of post-secondary or

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1 educational training programs. And maybe someone
2 can help me understand it a little bit better.
3 MS. PODZIBA: Rich, can you do that?
4 MR. POHLMAN: I just turned the mic off
5 thinking, well, anybody can respond.
6 I think that it means that, as I read
7 your earlier definition, it seemed to narrow the
8 use of the conjunction "or," right -- or, I'm
9 sorry, the use of the conjunction "and," right,
10 combining those "with" and "and" meant that it's
11 not just about an assessment that measures a
12 student's knowledge and skills on state standards,
13 but rather there was something else, and that
14 something else was entrance or placement into
15 courses in post-secondary education and training
16 programs. I think that really narrows what we're
17 talking about here to being assessments that are
18 recognized for those two purposes.
19 And so, hearing your explanation that
20 you feel that the consortia Assessments, probably
21 because they are being used in certain states for
22 this purpose, would qualify.

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1 But as I read it in, you know, the
2 comfort of this chair after it being handed out
3 very quickly, I wasn't sure that it immediately
4 rung for me that you were talking about
5 assessments that may in some states, or in their
6 institutions of higher learning associated with
7 those states, be used for those purpose. Make
8 sense?
9 So I felt their need to broaden it,
10 based on the definition. I don't know that this
11 is the right term. I understand that it's not a
12 defined term and that it can be, you know -- it
13 may come with -- it may be a loaded term.
14 So, I appreciate that there's some
15 difficulties in maybe using it. So maybe there's
16 some other terms that we can use that would get to
17 the point, or simply that it's enough that it's on
18 the record that that is the intent of the
19 Department.
20 But I'm also concerned, you know, we
21 lived with the last federal act for many years,
22 and that we saw the development of many

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1 assessments during that time period, and that we
2 should be concerned with, not just forming regs
3 that conform to our current conditions, but anyone
4 that makes us -- you know.
5 MS. PODZIBA: Patrick, so it's back to
6 you.
7 MR. ROONEY: So, I apologize, but I
8 think I'd like to not dissent but withhold from
9 agreeing to the language, if that's ok, until we
10 come back around to it at the end, just to kind of
11 give us a little bit more time to let Richard's
12 suggestion sink in.
13 MS. PODZIBA: We're really close.
14 MR. ROONEY: I appreciate that. The
15 end is soon in a positive way.
16 MS. PODZIBA: Ron was looking for
17 further clarification.
18 MR. HAGER: Are you saying it would
19 allow for a PARCC and Smarter balance?
20 MR. POHLMAN: Correct, for districts
21 that want to align their assessments because of
22 the decisions of states that may not be able to do

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1 that for one reason or the other, and some of
2 those may be assessments developed by the
3 consortia.
4 MR. HAGER: Just the way I read the
5 definition, when they added "or other states," in
6 other words, if it's been accepted by an
7 institution of higher education...
8 MR. POHLMAN: "Recognized".
9 MR. HAGER: Right. It doesn't have to
10 be in my state, but someone sent me, in the course
11 of all these e-mails, that 220 institutions
12 accepted the PARCC and Smarter balance. I don't
13 know if you need that proposed language to meet
14 that goal, just in term of Patrick's
15 un-comfortability with it as another alternative.
16 You may have already achieved your goal.
17 MR. POHLMAN: We may have it
18 sufficiently on the record.
19 MS. PODZIBA: All right, Lara, did you
20 have a new item?
21 MS. EVANGELISTA: So we're moving on
22 from this?

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1 MS. PODZIBA: Yes.

2 MS. EVANGELISTA: I do have a new item,

3 because I have a clarification, and I apologize

4 because I'm not as familiar with the law as I

5 probably should be, but the pilot, the innovative

6 pilot, isn't that more for elementary level or is

7 that also available for high school? Originally I

8 was told that it was more of a focus for

9 elementary schools.

10 MR. ROONEY: So there is no indication

11 who it would be for. It's for states to develop

12 and make assessments for their states. To the

13 extent that whatever states would participate in

14 that pilot would try out some different innovative

15 form of assessment that was determined would be a

16 good assessment will be then statewide over time.

17 So it wouldn't just be elementary.

18 MS. EVANGELISTA: Ok, so I want to go

19 back to that number (2), the item, is, on Page 6,

20 two things you mentioned: one was about the issue

21 of the testing burden and that this has the

22 opportunity to ease the testing burden for, you

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1 know, for kids in certain districts, and you know
2 again, I'm just reminded of the fact that I think
3 what will end up happening is that it's -- that
4 the students, many of them in the Title I schools
5 in the larger districts, are going to be the ones
6 that this whole thing is supposed to serve, that
7 all in Title I work is supposed to serve. They're
8 the ones who are going to have to be double-tested
9 subject to the testing burden, and that it's going
10 to be the argument between neighboring districts
11 that they won't be able to choose these
12 assessments and move away from being tested
13 multiple times in a year, taking away from
14 instruction for those students.
15 So, again, I know I've raised that
16 concern before, but I just want to say it again,
17 since it was brought up.
18 But also, I wonder if, in this
19 regulation, if a district -- because we have the
20 issue of comparability, could we or could I
21 propose to say that if a district administers more
22 than one locally-administered,

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1 nationally-recognized assessment in the district,
2 that it can do that as long as the data is
3 comparable, you know, across those assessments?
4 I mean, we do that across districts. I
5 just am still struggling why we can't do it within
6 a large district.
7 MS. PODZIBA: Ok, so this is the
8 proposal? Discussion on this proposal.
9 Lisa?
10 MS. MACK: My question would be why --
11 I don't understand why there would be more than
12 one given, just clarification.
13 MS. EVANGELISTA: Well, I mean, as
14 we've been saying for the past few days, I mean, I
15 think New York has seven hundred high schools,
16 around seven hundred high schools, and certain
17 schools may be ready at a given time to give a
18 particular assessment that they want to use, like
19 perhaps, you know, the SAT or the ACT or the AP.
20 Other schools may not be there yet but
21 are preparing to do that, and, you know, just
22 giving some schools the flexibility to do that I

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1 think is fair, so that students aren't having to
2 take multiple tests if they have to throughout the
3 year.
4 MS. PODZIBA: Mary Cathryn?
5 MS. RICKER: Yeah, thank you.
6 And so I want to clarify the idea would
7 be that, as long as there was a -- as long as you
8 could compare, that would be part of the criteria
9 for what you could choose?
10 MR. ROONEY: Right.
11 MS. RICKER: Ok.
12 MS. PODZIBA: Patrick.
13 MR. ROONEY: So, first I actually want
14 to point out that if you look on Page 6, line 41,
15 this is under the State Approval Process -- it's
16 going to be totally different on Judy's on the
17 screen -- but if as part of the requirements of
18 what the state has to go through when they're
19 reviewing a nationally-recognized test to
20 determine when it can be approved, one, the
21 criteria is that they make sure that the
22 assessment produce valid and reliable data

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1 including for all high school students used by the
2 statewide assessment, then I think that idea is
3 already captured in the requirement in general for
4 any kind of state-approved or
5 nationally-recognized test.
6 However, I think we would still have a
7 concern with Lara's idea. So I still think there
8 is -- notwithstanding this idea that the data, the
9 assessment has to be aligned; it has to be
10 equivalent in terms of coverage, difficulty and
11 quality, all the things that are laid out again in
12 the ESSA, not added by this proposed regulation,
13 and then provide comparable data that -- just the
14 fact that there's multiple tests being given I
15 think then causes difficulty for parents and the
16 public to then compare across schools within the
17 district on how the schools are achieving when
18 you're comparing the AP test in school A and the
19 IB test in school B and the SAT in school C and
20 the state test in school D, that that is going to
21 cause some inherent confusion to be able to say
22 anything with a degree of competence when you're

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1 comparing across those four schools, giving four
2 tests, all of which are nationally recognized, I
3 think that would be -- that would cause
4 unnecessary confusion and I think it would be
5 something that we -- one of the main reasons we
6 don't want to permit districts to select more than
7 one nationally-recognized assessment, is that we
8 want it to be -- if districts do that, that it be
9 the same nationally-recognized high school
10 assessment that they give to all of the kids in
11 their districts.
12 MS. PODZIBA: So I would take that as
13 dissent from this proposal?
14 MR. ROONEY: Yes.
15 MS. PODZIBA: Other new items.
16 Derrick?
17 MR. CHAU: So as promised yesterday I
18 came up with another proposal. It's sort of
19 similar to Lara's except with the provision and
20 authority up there.
21 It's with the provision that eventually
22 some of our large districts will offer the same

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1 assessment, but we may implement it in a more
2 strategic manner, and that would hopefully be
3 within a defined timeframe and address -- and to
4 share that implementation in a disproportionate
5 matter.
6 I think this is addressing what Mary
7 Cathryn said yesterday and others expressed, and
8 that I've expressed, in terms of districts are not
9 all the same size and implementation can be more
10 challenging in larger districts than smaller
11 districts, and we just want to be able to compete
12 and meet the needs of those students, and even
13 compete with the charter schools, the one hundred
14 charters schools within LA Unified who may switch
15 over to these assessments for our review and
16 knowing we want to be able to offer up schools
17 that are maybe ready to offer up some of those
18 assessments and then insure that other schools
19 are -- other school teachers are trained with
20 administering those assessments and in a planned
21 fashion.
22 MS. PODZIBA: Ok, discussion of

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1 Derrick's proposal.

2 Patrick?

3 MR. ROONEY: I know we talked a little

4 bit about this in previous sessions. I think I

5 have a follow-up question for you, Derrick, and

6 maybe others who have similar kinds of concerns.

7 I definitely appreciate that the scale

8 of trying to do this in LA Unified or New York

9 City is different from the small districts that

10 Mary Cathryn talked about outside of St. Paul

11 yesterday.

12 Districts do have a fair bit of

13 confidence in doing districtwide assessments that

14 this would not be a new concept to them, and I

15 appreciate your -- the version that you put up

16 here. I'm not sure the Department can support it,

17 but maybe it would be helpful to understand more

18 why you think that districts couldn't do this when

19 I think districts do this already. Even in New

20 York City and LA Unified, a district assessment is

21 what they administer.

22 MR. CHAU: It's a fair question, and I

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1 think, you know, when you take the example of
2 California implementing a Smarter balance
3 assessment, it was over a defined time period, and
4 it's not only the administration of the
5 assessments as it is the preparation of teachers
6 and students to administer those assessments and
7 to be prepared to administer those assessments.
8 When we talk about other statewide
9 assessments, all districts are held to the same
10 timeline. In this instance, we're allowing LEAs
11 to determine that timeline, and, given that LEAs
12 are different sizes and have different numbers of
13 high schools, I think that creates an unfair
14 advantage on smaller districts and charter LEAs
15 that we have to apply charter law within our own
16 district and that then competes against our own
17 schools for students, and that puts us in a very
18 difficult spot if they're able to implement things
19 faster and train their teachers and prepare their
20 students in a faster manner.
21 I'm just saying that, and again the
22 proposal is that, We will get there as a whole

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1 district; just give us the time to at least repeat
2 and be able to implement in a manner in which we
3 don't compete with those smaller districts.
4 MS. PODZIBA: Mary Cathryn?
5 MS. RICKER: So I would agree that
6 districts have a fair amount of confidence in
7 administering things statewide -- or excuse me,
8 districtwide, and I think we also have a lot of
9 evidence that sometimes districts don't implement
10 things districtwide as thoughtfully as possible or
11 as slowly as they need to, because of other
12 pressures.
13 I think there are many districts, and
14 I'll speak on St. Paul's behalf, that have a lot
15 of experience in designing attractive programming
16 as well, and actually in designing programming
17 that actually greatly reduces confusion among
18 students and families.
19 So a number of years ago, St. Paul went
20 through a very deliberate process of articulating
21 programs K through 12, sometimes pre-K through 12.
22 So for example there is a, you know, a pre-K

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1 through 12 international baccalaureate
2 articulation, and an AP, articulation and a
3 language emersion articulation, and so, I think
4 there -- and I don't know that St. Paul is
5 entirely unique in designing those things, and so
6 that we have a culture where families are not
7 looking to compare like test scores. They are
8 looking for programming that meets the needs of
9 their children.
10 And so to deliver them, you know for
11 them to choose an IB articulation, for example,
12 and then to deliver them for them to choose more
13 generic tests, because it has to be districtwide,
14 really ends up stabbing right at the heart of what
15 St. Paul is trying to do in making really
16 attractive choices and really attractive diverse
17 choices for families, so that they stay committed
18 to St. Paul public schools and they have quite a
19 different -- you know.
20 In trying to do quite a number of
21 things by designing those attractive choices, I
22 think what, you know -- so, Derrick's proposal

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1 actually doesn't even go that far as to say the IB
2 articulation still doesn't mean that kids in IB
3 schools still aren't taking the MCA, because he's
4 just saying, Give us time.
5 And then the district, if we were
6 moving toward, I guess, still the one single
7 assessment, we're still going to -- we're still
8 going to, in some cases, triple test students.
9 But he is just asking for an approval
10 of an articulation, and it seems -- it seems
11 reasonable because it is still not moving as far
12 as I think comprehensive districts would like the
13 freedom to have that smaller districts and even
14 charter schools within our district boundaries are
15 going to have.
16 But it at least gives us the
17 opportunity to thoughtfully plan for something
18 rather than roll it out, either hesitate to roll
19 it out at all, something more audacious, you know,
20 and make a more generic choice or roll it out
21 haphazardly and have some really unfortunate,
22 unattended consequences.

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1 MS. PODZIBA: Liz?

2 MS. KING: Yeah, I just wanted to

3 reinforce Patrick's position on this one. I mean,

4 this -- you know, I think it's important, the

5 grounding of the purpose of this assessment, there

6 are lots of different assessments for lots of

7 different purposes, and almost none of them -- I

8 mean, from the federal perspective, there is a

9 very limited number of them, and the one that

10 there is must be administered statewide, except

11 for this very limited exception, which I will be

12 honest, we were uncomfortable with this exception

13 when it was included in the law, but we recognize

14 that it's there and we are not trying to undermine

15 it as a requirement of the law, but certainly

16 would not want to broaden it by having a

17 school-by-school determination.

18 It's just that we know that the ability

19 to compare assessment data across schools is

20 incredibly important and it's a way that we

21 measure whether or not there is equal opportunity.

22 So to lose that ability within an LEA

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1 is just not something we would be comfortable
2 with.
3 I will give Derrick a major shout out
4 that we definitely appreciate that recognition
5 that there is an inequity in high school
6 assessments. We do tend to give low-quality
7 assessments to some children more than others.
8 And to Mary Cathryn's point, the need
9 for much better and culturally relevant
10 assessments, I absolutely agree with all that.
11 But a scenario of which there is a hodgepodge of
12 of assessment, I think a result would be a
13 steering of the data. This is meant to serve an
14 accountability purpose, not just to identify that
15 children are not getting what they need.
16 I mean, we know there are large
17 comprehensive high schools that are doing an
18 amazing job with kids, and we need to know that
19 and to lift that up and to replicate it.
20 MS. PODZIBA: Patrick, did you want a
21 final word on this?
22 MR. ROONEY: Sure. I think the

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1 Department will dissent on this language. I
2 appreciate the idea, and I definitely appreciate
3 the points that both Derrick and Mary Cathryn
4 made, and I do think that the challenge of doing
5 this at this scale for large districts is
6 difficult. Ultimately nothing would stop a
7 district from doing that planning before they roll
8 it out. It's just there clearly is more planning
9 they have to do, but we'd encourage them to do
10 that.
11 There is a fairly extensive process
12 laid out in the statute and in the regulation
13 we're proposing about the district considering
14 about doing this and then applying to the state
15 and then the state reviewing it and then it going
16 to the Department through our federal peer review
17 process, that all of that is built into the system
18 before the districts can then use it, which
19 hopefully would then provide some time for the
20 district to consider its implementation plan to be
21 ready when it gets approved.
22 But I think our hope would be -- our

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1 expectation would be that it would be
2 districtwide.
3 MS. PODZIBA: So there's dissent on
4 that?
5 MS. RICKER: May I make one statement?
6 MS. PODZIBA: If it's really brief.
7 MS. RICKER: I just want to articulate
8 that I need to state that hodgepodge of data
9 misrepresents the thought put into an articulation
10 design on which districts work.
11 MS. PODZIBA: Ok, thank you.
12 Are there any other proposals for the
13 items on Page 6 and Page 8?
14 Patrick?
15 MR. ROONEY: Sorry, I want to circle
16 back on the definition, after thinking about
17 Rich's point, which I appreciated clarification.
18 MS. PODZIBA: So this is the proposal
19 to add "determining college" and --
20 MR. ROONEY: "Career readiness".
21 MS. PODZIBA: "Career readiness".
22 MR. ROONEY: Yes. I think, based on

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1 Rich's discussion of what this might mean, it
2 doesn't sound different than the language that's
3 there about entrance or placement in the courses
4 of post-secondary education or training programs,
5 and I'm worried that it actually adds a little bit
6 of confusion about what that means as something
7 different than recognition by institutions of
8 higher education for entrance or placement that it
9 then will undermine the definition in a way I know
10 you did not mean, Rich, but I'm worried about
11 adding that language and then what it means when
12 we're implementing it.
13 So I think we're not comfortable with
14 keeping that language in. We dissent.
15 MS. PODZIBA: Any other proposals on
16 either of these two items?
17 So the only change --
18 MR. POHLMAN: Can I just get one
19 clarification, that that still would not change
20 any of your previous position that the assessments
21 we discussed would be eligible for -- it's a
22 clarification for the record more than a question.

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1 MR. ROONEY: Yes, that's correct.
2 PARCC and Smarter balance is being accepted for
3 post-secondary and education training programs.
4 MR. POHLMAN: Thank you.
5 MS. PODZIBA: Aqueelha.
6 MS. JAMES: I just would like some
7 clarification.
8 Just as a principal, my goal is to make
9 sure that my students are college ready, college
10 prepared, and career ready, and so I'm trying to
11 figure out how that doesn't support that, because
12 if the definition is recognized in that
13 assessments -- excuse me, given to the point where
14 higher ed, where we're allowing assessments so
15 that students can enter into higher educated --
16 higher institutions, I'm trying to figure out,
17 what's the difference? Because to me they're the
18 same. It just broadens it.
19 MR. ROONEY: So that's where I think
20 I'm a little stuck on whether it's the same or
21 whether it's broadening it. So I'm worried about
22 what it means to be recognized as college ready as

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1 a difference -- as a distinct thing from
2 recognition for entrance or placement into
3 post-secondary education or training programs,
4 that that definition may be considered to be
5 something different, and I don't know how higher
6 education would define "college ready" or "career
7 ready," because that was both on there, and as
8 different from entrance or placement in the course
9 of post-secondary education. They seem like they
10 were meant to be the same and just using slightly
11 different words.
12 But I'm worried that that then may
13 be -- people might think that they have got a
14 different language, because the way it's based on
15 this, it sounds like that was different than
16 entrance or placement into courses of
17 post-secondary --
18 MS. PODZIBA: Excuse me, with all due
19 respect, since there was dissent on this -- I
20 understand that you have some other questions and
21 I wonder if you can have that discussion offline,
22 just because we've got a very limited amount of

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1 time and we still have a number of issues to get
2 to if we're going to get to Supplement Not
3 Supplant.
4 MS. JAMES: And I recognize that,
5 Susan, but it's just a statement. Is that ok?
6 MS. PODZIBA: Yes.
7 MS. JAMES: Thank you, Susan.
8 So with this final statement, if we're
9 looking at assessments that allow students to
10 enter into college and support college readiness,
11 and if we're looking for students to be prepared
12 for training programs, that supports career
13 readiness.
14 So, I just wanted to go on the record
15 to say officially that I think the wording that
16 was used really does capture what you have here
17 and then allows for additional -- it just broadens
18 it. But I share with the team and everyone that
19 this is very narrow, and I just wonder what will
20 happen regarding for future assessments.
21 Thank you so much.
22 MS. PODZIBA: Thank you.

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1 So, are there any other proposals on
2 these items?
3 Ok, so don't think I haven't been here
4 for the discussion. I realize there were a lot of
5 proposals. I'm going to ask if there was dissent
6 on this section because people raised proposals,
7 and it doesn't mean -- if they don't get them, it
8 doesn't mean that they can't live with what's
9 there. That's the context in which I'm asking the
10 question on these two items.
11 So, the item on Page 6, lines 12 to 18,
12 including the item on Page 7, lines 8 to 21, and
13 on Page 8, lines 33 to 38, is there I think
14 dissent on reaching a tentative agreement on that
15 language?
16 Ok, thank you.
17 So now there was -- we have been
18 through everything, but there was a hold on the
19 definition -- or not the definition, on the
20 criteria, and so, I'm going to ask everyone to
21 turn back to that.
22 Patrick, what page was that?

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1 MR. ROONEY: Page 17.
2 MS. PODZIBA: Ok, Tony.
3 MR. EVERS: Thank you.
4 I would suggest or propose that we
5 accept the Department's most recent proposal on
6 lines 10 through 32, which includes I-1, I-2 -- or
7 romanette, excuse me, (i), (ii), (iii). And we
8 accept the Department's position on Page 15, which
9 I think is directly connected with this, lines 29,
10 30, 31.
11 Thank you for listening to us for lord
12 knows how many days, and I'm with them.
13 MS. PODZIBA: Ok, that's a proposal.
14 Is there further discussion of that proposal?
15 Audrey?
16 MS. JACKSON: So, I just wanted to -- I
17 know I talked to a few of you about this topic,
18 and just to share one story from my own experience
19 as a teacher, to highlight the importance of
20 acknowledging the two buckets being addressed, of
21 both cognitive -- severe impact cognitive function
22 and adaptive behavior.

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1 I would -- you know, if it's something
2 that is agreed upon in concept to be in Guidance,
3 that's one thing, but I'd like to just share --
4 I'll try to be very brief, and then hear if there
5 is a specific reason or example as to why this is
6 objectionable.
7 I have a student who I've taught in
8 fifth grade in the past, I won't name when, who is
9 a boy with a single mother, had some trauma
10 growing up with other members in the family,
11 really struggled to advocate for him to have
12 access to a school where he would be fully
13 included.
14 As a teacher, I've seen far too many
15 times, even in the great state of Massachusetts,
16 with great education records, that students' IEP
17 codes or labels placed on them determines the
18 setting they are placed in, which then transfers
19 to the quality. That doesn't mean all settings
20 are not quality, but oftentimes we accept being
21 separate which leads to a lower standard.
22 So my school is full inclusion with

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1 kids. I'm certified in moderate disabilities. My
2 school is full inclusion of kids with moderate
3 disabilities, students with emotional impairments,
4 et cetera.
5 This boy came to our class and actually
6 was very well integrated and learned to connect
7 with his peers, and there were many issues around
8 hindering and et cetera.
9 Anyway, the point is his medication
10 changed and he was very dysregulated and volatile.
11 His mother had kidney disease, was scared for her
12 health, which resulted in multiple
13 hospitalizations. The end result was that,
14 because the teams in place could not find another
15 option, the choice was taken out of the IEP team's
16 hands to the extent that providers weren't there
17 and he was tracked into residential care with
18 alternate standards and not given access to the
19 classroom in which he had actually thrived.
20 I bring that up and cite it, I know
21 that can be an anomaly, but I was -- I know Martha
22 Thurlow is not here today, but I was trying to

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1 pull up some numbers on, What does this actually
2 mean and what does it look like?
3 Because I know Lynn, Regina, you do
4 great work with kids in making sure that they're
5 included. So I know your sentiment is not about
6 excluding kids from learning experiences.
7 But Martha published a paper on
8 Mandated Inclusion in 2004. One example was in
9 Louisiana, so, they list here the types of
10 students with disability listed and if they were
11 given all assessment. Students with a mild mental
12 disability, there were nine hundred and
13 ninety-seven given in all assessments; students
14 with a moderate disability, one thousand seven
15 hundred and eighty-two were given an alternate
16 assessment, and that's from a long list I won't
17 keep going on about.
18 My own cousin has delaying syndrome and
19 he is in a home placement and does have
20 assessments. I'm not necessarily against it as
21 appropriate, but having seen what can happen to a
22 child who could thrive in a classroom when there

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1 aren't safeguards makes me just wonder if there
2 are ways in which we can compromise and discuss
3 the safeguards to make sure that there isn't
4 wiggle room for them to be inappropriately
5 excluded.
6 MS. PODZIBA: So do you have a
7 proposal?
8 MS. JACKSON: Yes, my proposal is -- so
9 I have probably two and you could see if you're
10 able to live with them. One would be, "such
11 guidelines must include a state definition of
12 students that" -- let's see. There I would --
13 it's not my perfect language, but where you could
14 put in the language that would address factors
15 related to cognitive functioning and adaptive
16 behavior, so that there would be flexibility in
17 some way to address those.
18 The second proposal would be under
19 romanette (ii), which would be where we're saying
20 specific reasons that a child -- "things that
21 could not be identified solely on the basis of," I
22 would say, you know, "low adaptive behavior

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1 functioning". So that it couldn't be only that
2 that would result in the child being removed from
3 the classroom.
4 MS. PODZIBA: Are these two separate
5 proposals?
6 MS. JACKSON: In the interest of
7 efficiency, I'm just laying my cards on the table
8 and saying if either of those are even
9 reasonable -- either or.
10 MS. PODZIBA: Either, not both?
11 MS. JACKSON: Yes.
12 MS. PODZIBA: Let's take them one at a
13 time. Factors related to cognitive function and
14 adaptive capacity. Can we have some discussion of
15 that proposal.
16 Ron?
17 MR. HAGER: I'm sorry, I was reacting
18 to something else. Maybe someone else can --
19 MS. PODZIBA: Does anyone else have any
20 further discussion?
21 Derrick?
22 MR. CHAU: Just a clarifying question.

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1 Romanette (i) on the board, is that still up or
2 did we remove that?
3 MS. JACKSON: My whole point is I had
4 been told that that was dissented on.
5 MS. PODZIBA: Yes, it was.
6 MS. JACKSON: And having actually
7 worked with many children who are affected by this
8 and their families, I wanted to bring the issue
9 back up respecting that it had been declined, but
10 in a way that was somewhat of a compromise.
11 MS. PODZIBA: Ok, so that's the
12 proposal. We're only looking at the first
13 highlighted section, because I think Audrey's
14 proposals are that if the first one doesn't work
15 then you want to propose a second one.
16 Is that the idea.
17 MS. JACKSON: Sure.
18 MS. PODZIBA: So discussion on the
19 first highlighted section. I'm giving Lynn a
20 minute because I know this was a concern of hers.
21 Regina?
22 MS. GOINGS: While Lynn is looking, I

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1 just wanted to mention that there are safeguards
2 in IDEA, particularly regarding students that you
3 are referring to, that I think I alluded to that a
4 couple of meetings ago, that those are the rights
5 that are given to parents and I think that's
6 because they read like Miranda rights, and so
7 there are protections under IDEA.
8 MS. JACKSON: I guess my concern is
9 there are protections for parents but not for
10 children. In this case the mother had the best
11 intentions but did not have the capacity -- the
12 onus would be on her.
13 MS. GOINGS: I just wanted to clarify
14 that.
15 MS. PODZIBA: Thank you. Thank you.
16 Lynn, I think we're waiting. Can
17 you --
18 MS. GOSS: The setting is determined by
19 IDEA and "adaptive behavior" is not defined, and
20 so by just moving things around it's just -- it's
21 just taking what they had proposed before and just
22 moving it around. It doesn't change the fact that

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1 it was less than desirable.

2 MS. JACKSON: Can I just say, so my --

3 what I was trying to do is, if I thought of it

4 further, one, the beginning, that would address

5 factors related to. I'm guessing that the camp

6 over here doesn't necessarily like this, but that

7 that would relate -- that would give the state the

8 ability to define what they meant by those

9 categories.

10 MS. PODZIBA: Tony.

11 MR. EVERS: So the camp over here is

12 going to agree to this if we do what you suggest?

13 MS. JACKSON: I don't know -- I talked

14 with you and some others and I talked with them to

15 try to learn about where there is room for

16 compromise. I'm not --

17 MR. EVERS: Ok. I just wanted to know

18 what you were suggesting.

19 MS. PODZIBA: Lynn, do you oppose

20 either or both of these? And if you could just

21 say you dissent instead of not "desirable". I

22 don't know what that means. So I just, I'm asking

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1 for some clarity from you.

2 MS. GOSS: We're not dissenting at this

3 moment.

4 MS. PODZIBA: On which one? On either?

5 MS. GOSS: On the first one.

6 MS. PODZIBA: So, take out the second,

7 please.

8 MS. JACKSON: Can I just say, yes,

9 thank you for considering for now.

10 MS. PODZIBA: Ok. So, we'll consider

11 this a friendly amendment to Tony's proposal. Is

12 there any dissent from adopting this language?

13 Is there any dissent from a tentative

14 agreement on this section?

15 I think the only thing we don't have

16 tentative agreement to is the waivers which we now

17 have to go back to, because we're not going to put

18 the waiver piece in, because we don't need to.

19 So, let's just -- can you just tell me what pages

20 that's on?

21 MR. ROONEY: Yes, it starts on the

22 bottom of Page 14 of the packet in front of us.

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1 MS. PODZIBA: Ok, so we again had a
2 number of proposals, Page 14, 15, 16, top of 16.
3 Are there any additional proposals on this
4 section? There are no proposals, it's -- there
5 had been proposals and there was dissent on them.
6 Any further discussion of these papers?
7 MR. ROONEY: So, Susan, is it helpful
8 to scroll down to make sure folks can see what's
9 on the screen? Because I know there were a couple
10 of changes offered. I don't remember what was in
11 the language, and all of Page 15 and the top of
12 16.
13 MS. PODZIBA: I don't think there were
14 any accepted changes, except for we changed an (a)
15 to romanette -- oh, no, that's not true.
16 Ok, any further discussion of this
17 section?
18 MR. HAGER: Can we have a second to
19 confer, please?
20 MS. PODZIBA: Sure.
21 (Discussion off the record.)
22 MS. PODZIBA: Ok, can we reconvene. Is

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1 there any further discussion on this section?

2 Is there any dissent from adopting a

3 tentative agreement on this section?

4 (No dissent from the committee.)

5 MS. PODZIBA: Ok, then we have a

6 tentative agreement on that. We have taken

7 tentative agreements on everything, so don't move.

8 Is there any dissent from turning our

9 tentative agreements into final consensus on all

10 issues on Assessment? Ok.

11 Congratulations, final consensus.

12 (Applause from the committee.)

13 MS. PODZIBA: We can take a break. So

14 let's take ten minutes and then see if we can make

15 magic on Supplement Not Supplant, ok?

16 Ten minutes, at twenty of.

17 (Consensus reached by the committee at 183:30

p.m.)

19 (Recess taken.)

20 MS. PODZIBA: Could everyone just move

21 towards their seats and we'll get started in a

22 minute. Ary will be here in just a minute.

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1 Patrick, there's a question about when
2 the committee will get the full, clean version of
3 Assessment.
4 MR. ROONEY: I don't know the answer to
5 that. That's a good question. It will probably
6 take us a little bit of time to clean it up, but
7 we can try to get it out within -- by the end of
8 the week I would think.
9 MS. PODZIBA: By e-mail.
10 MR. ROONEY: Yes. But there will also
11 be transcripts from all of the sessions which
12 we'll post online on the web site. That will
13 probably take a week or two until we have the
14 final version from today so we can get it posted.
15 But we'll post all of those.
16 MS. PODZIBA: Welcome back, Ary.
17 MR. AMERIKANER: Congratulations, you
18 guys. You have consensus. Well done.
19 MS. PODZIBA: For us that's one down,
20 one to go.
21 So, everyone got a package that has
22 five or six different proposals on it. Does

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1 anyone have a suggestion about a starting point,
2 or I could make a suggestion? No one has a
3 particular suggestion?
4 I'll make the suggestion. Thank you.
5 I'm going to suggest that we continue our
6 discussions with proposal five on Page 8, and the
7 reason I'm choosing that one is because that's the
8 one that had input from around the table, and so I
9 thought that might be a good place for us to
10 continue our discussions.
11 MS. PODZIBA: So, it seems -- I know
12 that if we can finish this section there is more
13 to discuss on Exceptions and there is a proposal
14 on Exceptions, but it seems that the hardest piece
15 of this is compliance, and when we ended there
16 was -- Thomas had made a proposal that added (b)
17 and (c) to proposal five, and then Liz offered
18 some -- offered romanette (i) (ii) and (iii) in
19 how it might be plausible to have a full-time
20 equivalent staffing formula component to
21 Compliance.
22 So, I'm going to open the floor for

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1 discussion of proposal five and any variations
2 anyone would like to offer to it. Perhaps we can
3 get some response for people who would really like
4 a full-time equivalent -- an FTE staffing formula?
5 Can we get some response to the provisions that
6 were proposed?
7 Marcus?
8 MR. CHEEKS: This is more of a
9 procedural, I guess, question.
10 When we're considering FTEs, is it
11 possible to consider and count an FTE that does
12 not have an active body with time?
13 I'm under the impression that FTE means
14 someone that's working. I'm not sure how, by
15 definition of an FTE, you would end up with
16 someone that could be a vacant position. But I'm
17 not an accountant either, so.
18 MS. PODZIBA: So that's a question. Is
19 romanette (ii) needed or is it already in the
20 definition of an FTE?
21 MR. CHEEKS: Right.
22 MS. PODZIBA: Does anyone know that?

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1 Does the Department define FTE?
2 Richard?
3 MR. POHLMAN: No, I mean the way I read
4 it, Marcus, was that an FTE, during an allocation
5 portion of the budget cycle, right, you may have
6 FTEs which are new positions or other positions
7 that are not yet filled versus when this test is
8 applied at the expenditure level that the test not
9 include any unfilled FTEs.
10 Does that make sense? That's the way I
11 read it, so I'm not sure that that supplies the
12 correct clarification. Others may disagree, but
13 that is how I read it.
14 MS. PODZIBA: So your sense is that
15 romanette (ii) would be needed to modify FTE if
16 people wanted to insure that FTEs were all filled
17 positions?
18 MR. POHLMAN: Right, if the goal is to,
19 at the end during the expenditure analysis,
20 consider not just FTEs that may be allocated
21 during the allocation process, then I think you
22 need romanette (ii) for that section. That's how

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1 I'm reading it. I'm not advocating one way or the
2 other.
3 MS. PODZIBA: Thank you.
4 Other discussion of these additions?
5 Thomas, these were to your proposals.
6 Can you give us a sense of your reaction or
7 respond to them?
8 MR. AHART: Consider if I had
9 positions, that that was the intent. You'd
10 have -- say you had twenty-five positions, then
11 this should be twenty-five positions.
12 The only one thing I guess I would say
13 is that, for staffing I would recommend that we
14 say "instructional staffing". That might be what
15 we get down to all the staff in the school, like
16 food service and so forth. So it includes
17 associates, anyone engaged with kids.
18 MS. PODZIBA: So on romanette (iii).
19 MR. AHART: On romanette (iii), yes.
20 MS. PODZIBA: Audrey?
21 MS. JACKSON: The last thing you said
22 is you can put in the regulation "anyone that

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1 engages kids". I agree there may be counselors or
2 other staff who may not give instruction. But
3 also service providers, I guess service providers?
4 MS. PODZIBA: What's the definition of
5 "instructional staff"?
6 MR. AHART: I would say anyone under an
7 administrator, or teacher contract, or
8 paraeducators, which are not a teacher contract
9 but are instructional, considered instructional,
10 just as teacher contracts, or --
11 What I'm trying to avoid is, just
12 because of the physical characteristics of some
13 buildings you might have more custodians or field
14 custodians based on square footage or how the
15 kitchen is set up, and there may be more food
16 service workers, which I don't think is relevant
17 to this.
18 MS. PODZIBA: Kerri?
19 MS. BRIGGS: I do worry about the pace
20 in which we're trying to write these rules, given
21 that they affect high school districts, given that
22 romanette (iii) -- is there one stopping formula

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1 in an LEA?

2 I imagine there might be multiple

3 considerations about cost and teachers versus

4 guidance counselors or student universities, AP

5 and principals, and those are maybe not the same

6 formulas. So I just, this language might be full

7 staffing, so it would still be fine.

8 MS. PODZIBA: Anyone have an answer to

9 that question?

10 MS. JACKSON: In Boston there's

11 different -- we have weighted student funding, the

12 restraint -- the complaints on the way the

13 formula -- and I don't know if there's a different

14 formula, but it looks different for high school

15 versus middle school versus elementary. The

16 weights may be different and the way you roll it

17 out is different. But I don't know that it would

18 meet all the different formula because it simply

19 is just by grade span. It's not exactly different

20 from one middle school versus another.

21 MS. PODZIBA: Liz?

22 MS. KING: Yeah, I would not be

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1 comfortable on including instructional staff. I'd
2 want to include all staff in the building. We
3 know there's disparities to instructors and
4 specialized support personnel and other vital
5 adults within the school building, and so we want
6 to make sure that they're included.
7 We know also that their salaries make
8 up a lot of a district's budget. Just as a
9 reminder here, we're trying to use a shoehorn to
10 get at funds through the use of talking about
11 services, but so we would certainly need to
12 include all adults in the school building, and
13 then on this question about custodians and food
14 service --
15 MS. PODZIBA: Do you have a question
16 about that, on custodians and food service, or are
17 you trying to get all of the support? Is there a
18 distinction that you can make?
19 MS. KING: Yeah, I mean, generally
20 service and custodial services are provided at the
21 district level or paid for at the district level,
22 so that way they would be excluded if you have an

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1 actual expenditure determination.
2 I think Kerri is right about the
3 timing, because we're going to be very careful
4 about these definitions, but I think that, in my
5 mind anyway, what you're including is every person
6 who would be included if you were using an actual
7 expenditures test, which would be everybody except
8 for those people accounted for at the district
9 level.
10 The other thing is that I think if
11 Kerri's right, there is a need to acknowledge that
12 there might be multiple formulas, and so I don't
13 know how to put that in. I don't know if you just
14 use formula in the plural, because I mean, this
15 would -- you also need to make sure that all of
16 the staff within the LEA are assigned on that
17 basis.
18 So I mean, it would be helpful here to
19 hear like a concrete, like is every adult -- does
20 everybody -- I mean, the Des Moines example, which
21 is really helpful, but that's the one we know
22 best, Thomas. Like are all of your adults going

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1 through the same formula or are there some people
2 who are assigned to schools sort of outside of
3 that one example?
4 MR. AHART: What we define as
5 "instructional staff," are paraeducators,
6 certificated and paraeducators, most of whom are
7 certificated, what are excluded -- I shouldn't say
8 excluded. Special education staff has a different
9 formula because it's really driven by IEP's, but,
10 you know, custodians, food service, those are
11 really a district-level thing. They're driven by
12 some sort of formula, but it really has little to
13 do with that individual student.
14 MS. KING: Yeah, that's really helpful.
15 So I think I would just want to -- I'm comfortable
16 thinking about a way, because we do believe that
17 being compliant with IDEA and Title VI is super
18 important, and so we would not want to impact
19 anyone adversely with those laws.
20 I'd rather create -- educators don't
21 have the same system and maybe it's acknowledging
22 that, so I don't think you would need to run them

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1 through the system, because those people are part
2 of complying with the right to provide for
3 children with disabilities.
4 So if I could find a way to do that,
5 that would be fine.
6 Two, for example, if a district decides
7 to add an assistant principal to another school
8 that was outside of the staffing formula, I would
9 just want to make sure that we were capturing that
10 person, as well.
11 And then I think we also need to add a
12 romanette (iv) that there is a districtwide salary
13 schedule, because we haven't addressed that. I
14 think it's assumed, but I just want to be very
15 clear about that.
16 So the way that I was thinking about
17 addressing the non-personnel expenditures was sort
18 of what Alvin had talked about before, and the way
19 I would think I'd want to do this, I'm not sure
20 how to do the drafting, but you would meet (a),
21 (b) or -- (a) or (b) or (c) or (d). So it's (c)
22 and (d) would have to travel together. And so,

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1 you would -- I can say if people would read out
2 what I'd like to put as part of this proposal for
3 part four, this new (d) attached to (c).
4 MS. JACKSON: I'm totally lost with
5 what you're saying.
6 MS. KING: So I think if it's written
7 then it will make more sense.
8 So the problem here is that currently
9 (a) and (b) address expenditures for personnel and
10 non-personnel expenditures, whereas (c) only
11 addresses personnel expenditures. So we need to
12 cover non-personnel expenditures in (c).
13 That's the problem I'm trying to solve.
14 So my proposal to solve that would be that if
15 you're using a (c), it would be a (c) plus (d) and
16 it would say "actual non-personnel expenditures
17 provided to each Title I school," I mean, this is
18 just the expenditures test, "are at least equal to
19 the average of actual non-personnel expenditures
20 provided at non-Title I schools".
21 So does that make sense?
22 So the problem is that here, like we've

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1 acknowledged that salaries are the bulk of
2 expenditures, but they are not the entirety of
3 expenditures. So we wouldn't want there to be a
4 disparity of non-personnel expenditures.
5 And then I have noted some requirements
6 that I would like to add to the weighted student
7 funding.
8 MS. PODZIBA: Ok.
9 MS. KING: I'll wait on that.
10 MS. PODZIBA: Yeah, let me get some
11 other voices in.
12 Marcus?
13 MR. CHEEKS: The more we have this
14 conversation the more I become concerned,
15 particularly around the staffing issues.
16 A couple of things I want to bring to
17 light. Staffing -- the FTE itself I think says
18 that you have a full-time person in that capacity.
19 I think it's overkill to even consider someone
20 gaming the system I guess initially to include
21 people that have not worked full time in their
22 test, and probably what would drive that is the

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1 timing in terms of which test is actually
2 conducted.
3 The secondary factor is I'm hearing
4 comparability. I'm hearing school-by-school test,
5 and that's different than what we should be
6 negotiating, which is Supplement Not Supplant at
7 the district level.
8 The manner in which we're writing I
9 think we're convoluting a process that, from what
10 I've been under the impression, the goal has been
11 to relax the rules.
12 We've gone from three basic tests, that
13 one in which itself was very confusing, to now I
14 think proposing a number of other items that will
15 make this even more convoluted as we go forward.
16 I guess my question for the Department
17 is, so that I'm not the one giving Mississippi's
18 version of comparability, could you explain that
19 juxtaposed to Supplement Not Supplant so that, for
20 my colleagues, that's clear? Because I think
21 we're -- this last conversation has been about
22 comparability all day.

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1 MS. PODZIBA: Ary.

2 MR. AMERIKANER: Thanks, Marcus.

3 So I think we have fairly substantial

4 concerns with the proposal on the table, both as

5 they come, as Marcus points out, pretty close to

6 comparability and I think are looking pretty

7 complicated, but also because we don't believe

8 that it actually gets at the issue of funds and

9 insuring that Title I schools have at least as

10 much funds as their non-Title I schools.

11 I just want to say, before we spend too

12 much time on this, I believe that we, the

13 Department, would dissent on this proposal.

14 But I do have a different suggestion to

15 offer to the table if that is ok to move us

16 forward, Susan.

17 MS. PODZIBA: Yes. If you dissent,

18 then we clear the decks and we start again.

19 MR. AMERIKANER: So I have two

20 thoughts: one would be to add to the proposal that

21 we came in with today an explicit authority to

22 districts to exclude benefits from their

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1 calculation. I know we heard a lot about the
2 concern about different teachers having different
3 size families and different amounts of benefits.
4 And the other is to take from Thomas'
5 proposal (b), the "or (b) uses a weighted student
6 allocation formula," but we would want to add to
7 that a safeguard that meets the requirements of
8 the weighted student funding pilot that Congress
9 wrote into the law.
10 MS. JACKSON: Ary, could you just add
11 one recommendation in proposal one and a different
12 one in proposal two?
13 MS. PODZIBA: We're clearing the decks.
14 We're going back to the Department's original
15 proposal.
16 MS. JACKSON: Right, but they said --
17 MS. PODZIBA: And then we're going to
18 add those two parts in. Judy is figuring it out.
19 MS. RICKER: Is this like proposal
20 seven, then?
21 MR. AMERIKANER: So that's right, Judy,
22 the "or (b)," and the exclusion part, I just came

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1 up with this, so I think we could put into the
2 section on -- I think we could do it -- we could
3 just write in (a), like a little (iv) -- hold on
4 just one second.
5 (Brief pause.)
6 MS. BECKER: Ary?
7 (MR. AMERIKANER reviews the revisions
8 on the screen.)
9 MR. AMERIKANER: No, we were thinking
10 down there that we would add a little five, after
11 romanette (iv). We would add a little five, or
12 romanette (v) or whatever, that says "An LEA has
13 the discretion to treat personnel costs as
14 districtwide costs for school-level costs".
15 MR. POHLMAN: What if you just included
16 it from the analysis?
17 MR. AMERIKANER: I'll have to take that
18 back to make sure that is ok, "excluding". Let's
19 work for a little bit and then I'll have to take
20 that back and make sure my folks are ok with that.
21 So "may exclude a cost-per-benefit".
22 MS. PODZIBA: So, Ary, could you just

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1 give us a little bit of context. What is this
2 providing?
3 MR. AMERIKANER: So I'm hopeful that
4 it's providing two things: one is a response to
5 some of the concerns we heard about the inequities
6 in spending that are not necessarily really
7 inequities for students in schools today, right,
8 because benefits for adults and benefits for
9 family members are not arguably impacting students
10 in their day-to-day lives in a school.
11 And so, in trying to be responsive to
12 that concern, which I think is a fair one, and
13 then the other change about -- was to try to just
14 be responsive to what we heard from Thomas as well
15 as others about the need to provide an explicit
16 out -- like I said, a path for districts and
17 weighted student funding from us.
18 I think we talked a bit about this last
19 time in California, although I don't think
20 districts in California do weighted student
21 funding, that was one of the examples being talked
22 about, that if a district is weighting and it's

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1 complicated and they put more money into non-Title
2 I schools because they have a high percentage of
3 English learners or students with disabilities,
4 they would be able to just state whether they're
5 using a weighted student formula, we add to the
6 provision that in the weighted student funding
7 formula that they are getting a substantial amount
8 of their funds through that formula, and because
9 that's what we just saw negotiated by Congress.
10 So that's the thinking behind it,
11 trying to just provide a new path.
12 MS. PODZIBA: Thank you. So I'd like
13 to open up discussion for the new proposal.
14 Mary Cathryn?
15 MS. RICKER: Thank you. I think both
16 the last discussion around, you know, running
17 around trying to define what instructional staff
18 means and that sort of thing, and then this latest
19 omission again clearly determines that referencing
20 collective bargaining agreements would be an
21 incredibly helpful thing, because not only are
22 staff very well defined in those agreements,

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1 they're broadly defined and comprehensively
2 defined.
3 So I'm wondering why there isn't a (d)
4 that says, "provided that this does not require
5 forced transfers or overall violation of
6 collective bargaining agreements," so that we can
7 state some of the other concerns that were
8 explicitly stated at the table, as well.
9 MS. PODZIBA: Audrey?
10 MS. JACKSON: No.
11 MS. PODZIBA: Alvin?
12 MR. WILBANKS: Just a comment on
13 benefits.
14 Generally benefits are the same
15 regardless of however. We have the size of the
16 faculty or personnel, not just faculty, that do
17 not choose to exercise the benefits, right,
18 because they are married to a spouse that has
19 benefits. So I'm not sure that one is as
20 attractive as it might sound.
21 And then two, benefits sometimes you --
22 the board pays for basic health coverage, certain

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1 benefits, and then there is the election that the
2 school district has, and you can buy other
3 benefits and you pay for those.
4 So I'm not sure that that one would get
5 my attention.
6 MS. PODZIBA: Ok.
7 Lara?
8 MS. EVANGELISTA: I just also wanted to
9 add another issue and it kind of goes with what
10 Mary Cathryn said is retroactive payments for
11 teachers, you know, based on collective bargaining
12 agreements.
13 In New York I know right now we're in
14 the middle of it and we're not going to be paying
15 everybody out until 2021 I think, and I just
16 wonder how that will also affect this, because
17 teachers are getting paid at different times and
18 different amounts, so it's just another issue that
19 I think is complicated.
20 MS. PODZIBA: Ary?
21 MR. AMERIKANER: Can I just, Mary
22 Cathryn, you were starting to go down this path

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1 but I just wanted to make sure I understood it.
2 Do you have a particular proposal or
3 language that you would add? I'm not sure if I
4 missed it.
5 MS. RICKER: Sure. I feel like I asked
6 a few times if we could reference that we will not
7 violate a collective bargaining agreement with any
8 of this.
9 So, yeah, I'm just wondering, in trying
10 to ameliorate things, why it's overlooked.
11 MS. PODZIBA: I think Ary is asking on
12 this new proposal where would you add that.
13 MS. RICKER: I would add it under (d)
14 under "personnel benefits cost," or "benefits
15 cost," and to say provided --
16 MS. JACKSON: And that's what they
17 could exclude?
18 MS. RICKER: So an exception would be
19 that you can't violate a collective bargaining
20 agreement.
21 MR. AMERIKANER: Would you be open to
22 one way I was just trying to think about where it

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1 would be like a separate -- like a (v), so after
2 the transition timeline would be a little
3 construction?
4 We have used language in the past of
5 "nothing in this" -- I'm trying to find it:
6 "Nothing in this section shall be construed to
7 alter or otherwise affect the rights, remedies,
8 and procedures according to the" -- that language
9 that we've used in the statute.
10 Do you know what I'm talking about?
11 MS. RICKER: That doesn't currently
12 apply to this?
13 MR. AMERIKANER: Yeah, what if --
14 MS. RICKER: Right.
15 MR. AMERIKANER: What if we added a
16 rule of construction that brought that in
17 specifically here?
18 MS. RICKER: And where would you bring
19 that in?
20 MR. AMERIKANER: I was thinking right
21 where Judy is (pointing). I was going to put a
22 whole (ii), at the very bottom, so transition, and

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1 then (v) would just apply to the whole reg itself.
2 MS. RICKER: And is that coming?
3 MR. AMERIKANER: No, I'm just trying to
4 respond to your --
5 MS. RICKER: That's what you suggest?
6 MR. AMERIKANER: -- your request right
7 now, yes. And at the very end of the document,
8 after "transition timeline" "by rule of
9 construction".
10 MS. RICKER: Sure, let's try that.
11 MS. PODZIBA: Kerri?
12 MS. BRIGGS: Yeah, I am like super
13 worried about everything getting added in in the
14 brief minutes we have remaining with no data to
15 think through the applications of what all of
16 these different --
17 MS. PODZIBA: Our other choice is just
18 to say, We have no consensus, and we have
19 forty-five minutes. You know, that's kind of the
20 limitation --
21 MS. BRIGGS: As I'll put on my business
22 hat here, as a business person we would think

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1 through the implications of all of this and how it
2 would apply to different scenarios and worry on
3 behalf of the districts about what this means, and
4 my brain is going "I don't know this world well
5 enough to be able to keep up with what we're
6 adding here".
7 I don't mean to say it's bad or that
8 these aren't good ideas, I just don't know a lot
9 about it.
10 MS. PODZIBA: Richard?
11 MR. POHLMAN: Can I just echo Kerri's
12 sentiment. We haven't even started to talk about
13 what Ary just mentioned. Actually I think it fits
14 within districtwide costs and services. We
15 haven't begun to talk about that definition, which
16 I know I mentioned earlier today that that is an
17 area which is completely undefined, as well in
18 current law, and then I know others have mentioned
19 elements about timeline.
20 So I'm wondering if we can really get
21 through all the substantive issues in forty-five
22 minutes.

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1 MS. PODZIBA: What's the sense of the
2 group? We could just stop. We could end early or
3 we can keep going ahead. Really, what's the sense
4 of the group?
5 MS. AHRENS: Why wouldn't we continue?
6 We can discuss as much as we can.
7 MR. POHLMAN: So I think my point would
8 be that, you know, my experience with this is an
9 on-the-ground annual Title I audit that happens
10 every year, and the rules that get defined in this
11 room impact every single thing that I have to do
12 with those auditors, and I have fought with
13 auditors for years now about the current
14 definitions, and that a slip of a rule or a slip
15 of a definition here has those really -- those
16 consequences carry on for me annually in my
17 audits.
18 I think that to Kerri's point really,
19 without thinking through what each and every one
20 of these definitions and all the unintended
21 consequences would be -- there are people who are
22 experts in this field who have thought about it,

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1 and we don't have access to them right now.
2 It makes me very nervous in that
3 somebody at the table, without an ability to
4 dissent, where we would create a rule of law that
5 is going to have drastic unintended consequences.
6 MS. PODZIBA: So we could use the time
7 about what we're going to do.
8 Here's the read on the situation,
9 right? So if there is consensus, that becomes a
10 notice of proposed rulemaking, and there is an
11 opportunity for public comment and the final can
12 change from the proposed, if all the -- if there's
13 a lot of comment from people saying that you all
14 made a mistake.
15 So it's not as though what happens in
16 this moment is final rule. So there is an
17 opportunity.
18 On the other hand, what I'm hearing
19 from people is that if we don't have consensus,
20 the Department may propose something that then
21 winds up in court or in legislative limbo, and so
22 there's a lot of uncertainty.

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1 So I think you may all be sitting
2 between two less than wonderful choices.
3 So, with that in mind, I suggest we've
4 got the time. It doesn't hurt us to try and go
5 forward, but it's really your call.
6 I just don't want to spend our time
7 talking about whether we should continue and then
8 we have no time, so it becomes an irrelevant
9 decision.
10 Lynn?
11 MS. GOSS: We are scheduled 'till 6:00,
12 correct? That was in the e-mail and that we
13 weren't to make any reservations until after 8:00.
14 MS. PODZIBA: Ok. I didn't know that.
15 Was there an e-mail to that?
16 MR. ROONEY: No, Lynn, I think you're
17 partly correct. So I always try to clarify;
18 friendly clarification. So I think the meeting is
19 scheduled for 9:00 to 5:00, and I think in order
20 to -- we're very dedicated to getting consensus on
21 one if not both of the topics today, knowing that
22 today was the last day.

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1 So we asked our contractors who booked
2 all your travel to not book an early trip out of
3 town, if that was the case, so we wouldn't have to
4 run out of the door at 5:00 o'clock. We left a
5 little room in the schedule.
6 Officially our meeting is scheduled for
7 9:00 to 5:00 and I think we talked about this -- I
8 don't know if we actually talked about it at the
9 table yesterday, but I think the way the process
10 works is if the group votes to stay later to try
11 to come to consensus, that we, as a group, have
12 that authority to do that. And if we don't think
13 that's a productive use of our time, we have that
14 leisure also.
15 You did get an e-mail that said you
16 can't book an early trip out of town. That was to
17 make sure that we got through as much of the
18 conversation as we could and there would be
19 consensus. But you are correct, it said the
20 meeting would be 9:00 to 5:00.
21 MS. PODZIBA: So we have forty minutes,
22 or if you agree we have an hour and forty minutes.

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1 Would you like to continue the discussion?

2 MS. JAMES: Not with an hour and forty

3 minutes.

4 MS. PODZIBA: We'll continue with forty

5 minutes, and then at 5:00 we'll decide whether

6 we're going to extend or not.

7 Is that a way to proceed? We're going

8 to go to 5:00. If we haven't decided we have

9 consensus by 5:00, we will decide whether another

10 hour will get us over the line.

11 Lynn?

12 MS. GOSS: At the end of the sentence

13 can we add "bargaining agreement," or

14 "memorandum"?

15 MR. AMERIKANER: Sorry, Lynn, I was

16 speaking out loud. I was going to suggest that we

17 use a little more detailing language that would

18 include that.

19 Can I read out the exact? So it would

20 be, "Nothing in the section shall be construed to

21 alter or otherwise affect the rights, remedies,

22 and procedures afforded to school or legal

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1 education agency -- or local education agency
2 employees under federal, state or local laws,
3 including applicable regulations or court orders,
4 or under the terms of collective bargaining
5 agreements, Memoranda of Understanding, or other
6 agreements between such employers and their
7 employees."
8 MS. PODZIBA: Does that work for --
9 does that address your question?
10 MS. GOSS: Yes.
11 MS. PODZIBA: Tony?
12 MR. EVERS: I hate to ask this, but I
13 want to be a productive member here.
14 If we could go back, and I haven't
15 processed what's above this yet, and if somebody
16 can walk me through it, especially in terms of,
17 with this proposal are districts allowed to use an
18 FTE approach or a modified FTE approach?
19 I'll take anybody around this table to
20 help walk through that for me, because it's not
21 clicking for me, and one reason is because I
22 haven't seen it yet.

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1 MS. PODZIBA: Ary, can you answer that?
2 MR. AMERIKANER: Is the question would
3 districts be allowed to use an FTE approach?
4 MR. EVERS: Right, or under what
5 circumstances has the FTE approach been morphed
6 into "super FTE approach," "muscular FTE
7 approach"?
8 MR. AMERIKANER: So the districts
9 wouldn't be allowed to use an FTE approach as long
10 as it results in FTE spending. So it would
11 continue to apply to the results-based test.
12 MS. PODZIBA: But it gives them an
13 option of taking out benefits in your
14 per-people --
15 MR. AMERIKANER: Yes, thank you.
16 MR. EVERS: I'm sorry?
17 MS. PODZIBA: It gives you the option
18 of not including benefits in your per-people
19 calculation.
20 MS. JACKSON: Can I ask a clarifying
21 question?
22 So we have been editing, working only

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1 on proposal one with the exception of the addition
2 of (v) at the end of the whole document.
3 Is that correct?
4 MS. PODZIBA: Yes.
5 MR. EVERS: And the "or" is the
6 appropriate connector after (a)?
7 MS. PODZIBA: Ary?
8 MR. AMERIKANER: I'm sorry?
9 MR. EVERS: The "or" at the end of
10 (a) --
11 MR. AMERIKANER: Are you asking --
12 MR. EVERS: Should it be --
13 MR. AMERIKANER: Yeah, I think after
14 (a), right, "or (b) would result in". So, "or
15 (b)".
16 MR. EVERS: Got it.
17 MS. PODZIBA: Further discussion of the
18 proposal.
19 Derrick?
20 MR. CHAU: Just a clarifying question.
21 I understand that there is a
22 prohibition in the Supplement Not Supplant that

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1 specifically prohibits a prescription of a
2 specific methodology that a local education agency
3 uses. So how is this not violating that?
4 MR. AMERIKANER: I've heard this a
5 couple of times. I think it doesn't violate that
6 because it is multiple methodologies that are
7 allowed. You can use any methodology for the LEA
8 spending funds.
9 MR. CHAU: But the second part is a
10 specific methodology.
11 MR. AMERIKANER: Right, so we're adding
12 a (iv), so it would be (a), any methodology that
13 you want, which results in a spending amount, or
14 (b), an additional specific option, that we won't
15 have to apply that outcome-based test here.
16 So all we were going to do was add, not
17 further limit, what was our proposal.
18 MS. PODZIBA: Kerri?
19 MS. BRIGGS: So basically there's three
20 methodologies on the table: one that allocates
21 resources through staff if it ends up being a
22 result; two the methodology that uses weighted

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1 student funding if it ends up with your result; or
2 three, uses weighted student funding if it meets
3 your requirements of another section?
4 There's three allowable methodologies,
5 if I'm reading that right.
6 MR. AMERIKANER: Say them again,
7 because I thought there were only two.
8 MS. BRIGGS: Well, I think in romanette
9 (ii) there's the -- thank you, Judy, that's
10 methodology one, "allocates resources using staff
11 positions if it results in an equal amount".
12 The second one is the one she's
13 highlighting right now, "methodology allocated
14 through weighted student funding formula if it
15 results in an equal amount."
16 Or number three --
17 MR. AMERIKANER: I'm sorry, I didn't
18 understand what you were saying.
19 MS. BRIGGS: Kind of back to Derrick's
20 point, it still seems to be prescribing
21 methodology.
22 MR. AMERIKANER: What I think I'm

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1 hearing you saying but -- well, I don't know if
2 this is what you intended today, but one thing you
3 were saying is the "such as" clause may be a
4 little confusing and we're trying to add a
5 substantive option.
6 So, I'm happy to think about how we
7 could clarify that, if we can say, We can just
8 strike the "or methodology," the "weighted student
9 funding system or any other methodology of the
10 district's choosing." So the point is that (a)
11 results in and applies to those methodologies --
12 all methodologies with the exception of (b) with
13 the weighted student allocation.
14 MS. PODZIBA: Mary Cathryn?
15 MS. RICKER: So is your interpretation
16 of specific methodology that, because methodology
17 is singular there, and because there are multiple
18 options here, that -- because like your
19 interpretation of methodology is, if there had
20 been one methodology up here, then that would be
21 wrong, but because it's multiple choice, that it's
22 not specific?

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1 MS. RIGLING: I think essentially
2 that's right. I think we do not believe we could
3 require the use of a weighted student allocation
4 formula. I don't think we could require the use
5 of allocation by FTEs. I think that basically
6 this says any methodology you want.
7 You do have to have a methodology, and
8 I think the statute requires that. We're saying
9 what that methodology is.
10 MS. RICKER: So you could use anything
11 not listed here as well, because of the words
12 "provided that" --
13 MS. RIGLING: No. I think the
14 provided methodology qualifies what the results of
15 the methodology would be, but it seems like the
16 methodology that you use is up to the district.
17 MS. RICKER: Wouldn't it be easier to
18 just say that?
19 MS. RIGLING: "Except for (b)."
20 MR. AMERIKANER: So are you saying that
21 we would essentially take -- so when you say
22 that -- we said "or any other methodology of the

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1 district's choosing," are you suggesting that we
2 say "provided the methodology results in" -- take
3 out (a) and just have that whole paragraph be one
4 paragraph, and then say --
5 I'm just trying to understand what
6 you're saying. I feel like you didn't just say
7 "or any other methodology the district chooses,"
8 so I'm trying to understand what -- I'm not sure I
9 understand what you are saying.
10 MS. RICKER: And I'm trying to
11 understand how finite the choices are or perhaps
12 how infinite they are.
13 MS. PODZIBA: So it seems that the
14 Department is suggesting that an LEA may choose
15 any methodology. So there may be an infinite
16 number of methodologies, but that the result, the
17 performance of that methodology is either (a) or
18 it's (b).
19 MS. RICKER: Yeah.
20 MS. PODZIBA: And I think that's
21 certainly a central point of perhaps different
22 interpretations.

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1 MS. RICKER: Yeah.

2 MS. PODZIBA: I think that's what the

3 Department is saying.

4 All right, I've got a bunch of people.

5 Lynn, you've been waiting.

6 MS. GOSS: To me this feels really

7 punitive, and by prescribing the methodologies, it

8 would be like me saying to my kids when they were

9 little, "Here. I want you to eat peas. But if

10 you choose to eat the corn or the beans or the ice

11 cream, you have to write a results paper on why

12 you made that choice and how you came about it".

13 It just feels really punitive. So it's

14 like, I don't know, it almost feels like bully

15 pulpit; You do it our way, and if you don't want

16 to go through it our way, then you go through

17 these other groups to do so.

18 MS. PODZIBA: The question is, is there

19 a better way to do it?

20 MS. GOSS: Yes.

21 MS. PODZIBA: I think that's the

22 question on the table.

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1 Alvin?

2 MR. WILBANKS: I certainly think

3 there's a better way to do it. I'm not sure we

4 would get any agreement to it. It's problematic

5 for me because the state and local per-people in

6 each Title I school must be equal to or greater

7 than the average amount for people in Title 1

8 schools. That's a showstopper for me. I think

9 that's in the way. I think it is really where we

10 want to put a lot of effort here to wordsmith or

11 whatever something, and I think this is an

12 overreach that does not have to be in there and

13 that it makes it very difficult.

14 All of you are good people. I know

15 everybody's trying to do their very best, and I

16 appreciate what you're doing, and I appreciate

17 your points, but I don't think -- if we can't get

18 beyond that, I'm in doubt that anything is going

19 to be happening for some of us.

20 I can only speak for myself, my point.

21 MS. PODZIBA: Again, I'm just hoping

22 that there may be other ideas, because we're

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1 limited to the ease of the creativity that we can
2 bring forth.
3 Thomas.
4 MR. AHART: Just for clarification, I
5 want to understand how that proposal follows in
6 the statute, a special rule that states "No local
7 education agency shall be required to identify an
8 individual cost or service supported under this
9 part as supplemental".
10 MR. AMERIKANER: Can you identify what
11 you believe in particular would be -- cost or
12 service would be identified as supplemental?
13 MR. AHART: Well, if you calculate all
14 Title 1 being calculated down to the per-student,
15 then by default all the Title I support is
16 supplemental.
17 MR. AMERIKANER: I'm sorry, I'm just
18 really not understanding what you are saying.
19 Are you saying -- so in general, in the
20 past, the presumptions that have been used to
21 figure out whether Title I funds are supplemental
22 or not, as you probably well know, have been about

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1 whether the Title I dollars have been used to buy
2 services that are in fact supplemental.
3 So it hasn't been about dollars, about
4 state and local dollars. It's about what are the
5 services that you're buying with your Title I
6 dollars. And that caused a whole bunch of
7 problems that we talked about here about is our
8 read of this special, or is it that it's no longer
9 allowed?
10 So you could no longer say you cannot
11 buy a particular kind of service with your Title I
12 dollars if you're buying it with your non-Title I
13 dollars, too, the specific thing that you're
14 buying with Title I dollars. And I don't think
15 anything in this could talk about limiting at all,
16 in fact, what Title 1 dollars could be used for or
17 spent on.
18 MR. AHART: No, that's not what I was
19 suggesting. I was suggesting at the building
20 level that ninety percent of the cost is
21 personnel.
22 MR. AMERIKANER: I agree. I'm sorry, I

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1 just don't know how to --

2 MR. AHART: The point I'm trying to

3 make is -- and it's maybe just another attempt at

4 trying to illustrate the frustration that Alvin is

5 referring to -- is that if I have to calculate

6 exactly to the dollar, not level of quality of

7 service, but to a dollar expended that is spent on

8 staff, that's not Title, and then you're in

9 essence saying -- in my way of thinking,

10 infringing on that individual cost or service, not

11 getting paid in that.

12 Because I'm going to be forced to do

13 something with those Title dollars if I can't

14 transfer teachers and I don't have unlimited extra

15 funds, and I don't have Alvin's "slush fund" to up

16 the base level of staff that I have all across the

17 district.

18 MR. AMERIKANER: I'm going to try one

19 more time, and then I don't know if there is

20 someone who wants to answer that.

21 I just want to say that the discussion

22 also is "No district shall be required to identify

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1 the individual cost or service supported under
2 this part," which to me means which Title I
3 dollars.
4 MR. AHART: Right.
5 MR. AMERIKANER: So we're talking about
6 Title I dollars specifically.
7 MS. PODZIBA: Ok, let's get some other
8 voices in.
9 Audrey?
10 MS. JACKSON: So we've been -- all this
11 time we've been meeting on proposal number one, so
12 it seems really clear --
13 MS. PODZIBA: The other proposals, we
14 went to proposal (v) and the Department dissented
15 on that.
16 MS. JACKSON: Right.
17 MS. PODZIBA: And (v) was -- we kind of
18 started at a new slate, essentially.
19 MS. JACKSON: Oh, we --
20 MS. PODZIBA: The Department put
21 through a new proposal and that's what we've been

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22 working from.

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1 So if there are things to add to this,
2 that's where we are right now.
3 MS. JACKSON: So what's on the board is
4 the working slate and what's in the binder is not?
5 MS. PODZIBA: That's correct.
6 Derrick?
7 MR. CHAU: I just want to echo what
8 Alvin said.
9 I think the requirement around the
10 per-people funding has serious implications for
11 quite a few districts around the nation, and it
12 would require significant meeting of funding or
13 additional requirement to meet that funding.
14 If we start adding caveats and
15 exceptions to the budgeting description as well as
16 limited and not fixed, and not being able to
17 actually bargain on personnel costs and collective
18 bargaining, knowing that our districts, eighty- or
19 ninety-percent of their budget is personnel costs,
20 we're actually limiting them pretty significantly
21 in how they meet those requirements as well.
22 So I just want to put that out there

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1 and say I think it's going to be difficult for us
2 to accept a per-people piece, thinking about ways
3 that we could possibly address that piece.
4 I mean, if there's a way for -- if
5 there's a way for districts to determine what goes
6 into those per-people funds, rather than writing
7 exceptions, but giving districts the autonomy to
8 determine those per-people funds might be
9 possible, as well. I know that's unlikely to be
10 accepted by others across the table, but I wanted
11 to just put that out there.
12 MS. PODZIBA: Marcus?
13 MR. CHEEKS: I have a question and, if
14 not here, then I want to get it on the record for
15 future consideration.
16 How does the proposal account for
17 state-required teacher units or state-required
18 programs?
19 Going away from the item-by-item test
20 helps tremendously along those lines, but you're
21 still going to end up with areas where maybe there
22 are certain initiatives being pushed by the state

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1 that's being funded by state and local dollars,
2 certain levels, standards where teachers are
3 concerned.
4 How do those things factor into this
5 element? And if they don't, then I definitely
6 want to look at that as an area of concern that
7 will definitely need to be spelled out as we go
8 forward, either in the final, final regulations or
9 in some type of Guidance that is issued.
10 MR. AMERIKANER: I'm hesitating because
11 I'm not quite sure how to respond.
12 I guess I would say -- and tell me if
13 this is responsive or not to what you're thinking
14 about -- is that actually our whole intent here is
15 to be as non-prescriptive as possible when it
16 comes to how dollars, state and local dollars are
17 spent and how Title I dollars are spent, both, and
18 to focus on just the basic how much and whether
19 state and local funds are going to Title I schools
20 in an amount that is -- that leads people to the
21 average of non-Title I dollars.
22 And so that would be regardless of

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1 whether the state and local rules and policies and
2 procedures dictate that certain state and local
3 dollars are spent in certain ways.
4 So we wouldn't get in the middle of
5 that under our thinking and under our proposal.
6 It would really be just that it insures as much
7 that it's going to Title I schools so the Title I
8 schools can come on top and make sure they're
9 supplied the Title I funds that high-poverty
10 schools need.
11 MS. PODZIBA: Eric?
12 MR. PARKER: Well, it seems that the
13 per-people is greater. And I think that's a
14 hang-up in contradiction to the statute and what's
15 mentioned prior to that. I think that's a piece
16 that's been mentioned, but that I also mentioned
17 in previous sessions, because I think that can be
18 perceived as a methodology in and of itself.
19 So I think one proposal was made
20 earlier in earlier sessions about could that (a)
21 be a Guidance piece rather than an actual statute,
22 being that it could be perceived as a methodology?

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1 MR. AMERIKANER: I think without
2 something else to replace it, that felt like we
3 got a clear test for auditors, we would not be
4 willing to move that into Guidance.
5 If we had something else to think about
6 closing it with that would be able to attest to
7 insuring that Title I schools got the funds, state
8 and local funds that they were supposed to, then
9 we would be willing to move that to Guidance
10 potentially.
11 MS. GEORGE: I just had a clarifying
12 question.
13 MS. PODZIBA: Janel.
14 MS. GEORGE: Sure, just a clarifying
15 question, especially to the concerns that Alvin
16 and Thomas have been raising.
17 Again I know that we're all here for
18 the same purpose. I guess my question -- and
19 again I'm not an administrator, so I really am
20 just seeking clarification.
21 If you are not supplanting, would it
22 still be a frequent occurrence that you would not

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1 be under (a), the spending of your Title I
2 funds -- I'm sorry, spending in your Title I
3 schools being equal to a greater-than average
4 amount for people in non-Title 1? Would that
5 still happen frequently and is that to such a
6 degree of frequency if they're not supplanting
7 that it's not captured in the Exceptions?
8 And again that's just to clarify.
9 MR. AHART: So you're asking about how
10 many schools or which -- whether this would
11 actually -- how many schools wouldn't meet this
12 test, or --
13 MS. GEORGE: I guess what I'm saying is
14 if you are not supplanting -- it seems to me
15 again, from a non-school administrative -- so I'm
16 not doing the audits or anything like that. It
17 would seem to me that you would have a high
18 likelihood, if you are not supplanting the Title I
19 schools, your spending in your Title I schools
20 would pretty much be greater to or equal than your
21 non-Title I schools.
22 But the concern that I'm hearing is

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1 that you can still not be supplanting but, you
2 know, not meet that test, more so than is captured
3 in the exceptions.
4 That's what I'm clarifying.
5 MR. AHART: Right, I think we've
6 covered a lot of that in the past couple sessions
7 where we have talked about personnel costs and the
8 number of experienced teachers in schools.
9 MS. GEORGE: Right, and that's why I'm
10 trying to see if we can come to agreement on the
11 exceptions, instances where you feel there would
12 be exceptions, given that we have had this
13 conversation over so many days, if you feel that
14 this would be violated so frequently.
15 MR. AHART: It would, for a couple of
16 different reasons, which I think we talked about
17 already, but also I would add that, while I
18 absolutely appreciate the concern of not wanting
19 all of our Title schools being flooded with PT
20 teachers, that does not mean that the amount of
21 salary and benefits equates with quality.
22 And so, one of the reasons -- the two

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1 reasons that I would give that would make us out
2 of whack, most frequently, would be older teachers
3 not wanting to be in the schools, and so going to
4 schools with fewer challenges, which they're
5 allowed to do, pretty clear in the collective
6 bargaining agreement, and two, because we actually
7 have programs in place to recruit teachers and
8 provide additional support for them so that they
9 can be successful in our more diverse environments
10 like our Title I schools. So, we would be out of
11 compliance, I'm sure, almost constantly.
12 MS. PODZIBA: Ok, Alvin.
13 MR. WILBANKS: I'm not sure if this is
14 a good evaluator, but the per-people averaging is
15 sort of like getting a kidney transplant from a
16 bedwetter. You need the kidney, but the
17 side-effect you can do without. And I think this
18 is an accident waiting to happen in terms of
19 supplanting.
20 Because -- and I don't want to get into
21 all the details we've gone over, but most every
22 district across the nation, the personnel cost is

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1 anywhere between -- I'm not sure of the figure you
2 used, Derrick, but it's in the high eighties,
3 somewhere between eighty-five and ninety percent.
4 So, when you consider that, that's the need, the
5 bulk of what you do, and it can vary greatly among
6 states, and it's not just among Title I students.
7 So, anyway, I'm just saying this is a
8 huge leap if not a showstopper.
9 MS. PODZIBA: Tony?
10 MR. EVERS: The first day I talked
11 about I connected with our staff back in
12 Wisconsin, they said the vast majority of the
13 school districts in Wisconsin would not be in
14 compliance. It has nothing to do with equity or
15 whatever. It has to do with salary schedules and
16 stuff like that.
17 So the upshot is, if we're compelled to
18 do it the way the Department wants us to do it,
19 and I respect the Department, because it came up
20 with the solution last night, and we talked about
21 this, too, how do we solve this?
22 Spending more money, shuffling people

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1 around, isn't good for kids.

2 One of the most important variables as

3 to non success that has been identified in

4 struggling schools is shuffling of teachers.

5 Well, have at it. That's exactly what we're going

6 to get.

7 So I agree with my colleagues. This is

8 a big deal. I'm not convinced it's going to be

9 solved before 5:00 o'clock today or 6:00 o'clock.

10 So, I just want to reiterate that

11 issue.

12 MS. PODZIBA: Lara?

13 MS. EVANGELISTA: I just wanted to

14 provide an example, because we're asking about the

15 frequency that this could happen.

16 You know, I think I mentioned before

17 that in New York City my kids are in a non-Title I

18 school, but my school is a Title I school. I know

19 for a fact that the -- and we do average teacher

20 salary based on the previous year within the

21 school. So I know for a fact that at my

22 children's school, the teachers are -- it's been

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1 around longer, ok, so our school is about ten,
2 eleven years old. We have a mix of experienced
3 and inexperienced staff. Their average teacher
4 salary is higher. But absolutely I would want my
5 children to be taught by my teachers compared to
6 the teachers that they have at that school, and I
7 know --
8 You know, it's been said, our teachers,
9 just because they're more experienced, when you
10 look at schools that have been closed in New York
11 City, and I'm not a fan of the school closures,
12 but what they often are doing is asking for the
13 most experienced teachers to either retire or
14 reapply for their jobs, not because of the cost,
15 because the instruction needs to change. There
16 needs to be -- something that wasn't happening
17 thirty, forty years ago, but something that's much
18 more recent that our recent graduates have.
19 So I just think we're really looking
20 for a kind of simple answer to a complex problem
21 and there is a lot that factors into that
22 personnel hiring. And as Aqueelha says, it is the

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1 most important thing that we do, and it's how I'm
2 able to serve my students so well, is because my
3 staff and I have the ability to choose the best
4 person, which last year was an experienced person,
5 but the year before was a brand new teacher who
6 had been an apprentice with us and we took him in
7 the next year. And they're both equally serving
8 the needs of our students.
9 MS. PODZIBA: Ary, I think I'm going to
10 give you what may be the last word on this issue.
11 MR. AMERIKANER: Oh, my.
12 I think that the teachers in Lara's
13 Title I school should be paid more, and I think
14 that -- and I think that Title I schools --
15 teachers who used to work in Title I schools
16 should be paid more, and I think the working
17 conditions should be better, but the real thing
18 we're trying to do here is implement the law and
19 implement the requirements for Title I schools and
20 the kids that go to those schools -- and I'm
21 talking about kids in high conditions of
22 poverty -- so that they get the same local funding

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1 before they get Title I funds on top.

2 I really appreciate the conversation.

3 I think it's important. I think you're all making

4 good points. I think we can work together on this

5 going forward.

6 MS. PODZIBA: Thank you.

7 And I'm just going to officially ask on

8 the proposal that we have, which is a modified

9 version of the Department's proposal, is there

10 dissent?

11 Yes, ok.

12 Does anyone have any new ideas of any

13 way that we could solve this problem in fifteen

14 minutes?

15 So I think we had what we could have in

16 terms of a discussion, and I personally thank you

17 for putting your hearts into both this and

18 Assessments, and I have really enjoyed working

19 with you.

20 I'm going to take a couple seconds.

21 There is no one signed up for public comment.

22 Is there anyone in the audience who

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1 would like to address the committee at this time?
2 Is there any audience left?
3 Ok, so next steps are, I will send you
4 a draft summary and we'll have to approve it by
5 e-mail. That shouldn't be so hard. Hopefully the
6 summaries were approved pretty quickly, but I'll
7 send it out. I'll ask if there are any comments
8 or proposed revisions. If there aren't, I'll send
9 it out as final. If there are, I'll send it out
10 with the proposed changes and ask if it's final.
11 Patrick, I'll let you talk about the
12 final regulatory language.
13 MR. ROONEY: So we did reach consensus
14 on the Assessment language. That means, as
15 according to our protocol, we will put out that
16 language today. There is a process that we have
17 to go through, even though that language was
18 agreed to, there were many suggestions over the
19 last three sessions, yesterday and today, where
20 people said things needed to be clarified and that
21 Guidance be in the preamble.
22 The preamble is not what we discussed,

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1 and getting into the weeds for those of you who
2 don't pay attention to the federal register, in
3 public comment we include a preamble which
4 describes the intents of the regulations and, you
5 know, we will try to capture some of the questions
6 and the suggestions we received over the last
7 three sessions in that preamble. That will take
8 time for the Department to draft and then go
9 through our formal clearance process. So it will
10 be several weeks at least before the Assessment
11 reg that's published for public comment. But that
12 is the steps we'll go through.
13 Kay, I don't know if there's anything
14 you would add to our process?
15 MS. RIGLING: No.
16 MR. ROONEY: There's nothing Kay would
17 add to that process?
18 MS. RIGLING: No, just what we said
19 before. We said that we would agree to publish
20 the language that you all agreed to, barring any
21 unforeseen need for the Secretary to reopen
22 negotiations. I don't think any of us anticipated

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1 that that would happen, but I just wanted to leave
2 you with that hopefully very slim possibility.
3 MR. ROONEY: But as we were mentioning,
4 we would reconvene the group. We'd bring the band
5 back together, so just check your e-mail. We
6 don't expect that to be the case.
7 I just want to take a minute and
8 personally, and on behalf of the Department, thank
9 all of you for taking the time out of your very
10 busy and very hectic schedules to join us in this
11 endeavor for the last several weeks and for travel
12 to DC.
13 You know, I know all of you have very
14 busy full-time jobs that we took you away from to
15 do this, and I appreciate the dedication and the
16 commitment you guys had to this.
17 I appreciate that we got consensus on
18 Assessment. We didn't quite get consensus on
19 Supplement Not Supplant, but I think we had a very
20 rich discussion that is very helpful for us to
21 hear the positions so we can figure out the next
22 steps we have to take on Supplement Not Supplant.

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1 For all the discussion, everyone was
2 very focused. They were engaged. You were all
3 very helpful and constructive throughout and I
4 really appreciate the commitment and the
5 dedication you all had, and I really want to thank
6 you for taking the time to do this.
7 This can feel very disconnected from
8 what's in your schools and your classrooms, but
9 these rules become what the expectations are for
10 states, and they do move down to classrooms and
11 hopefully a structure that will help improve
12 assessments that make sure that they are good
13 quality tests that are valid, fair and reliable
14 for all kids.
15 I just want to thank you for all of
16 your time and effort. So thank you.
17 MS. PODZIBA: We're adjourned.
18 (Whereupon at 4:59 p.m. the Negotiated
19 Rulemaking Committee meeting was adjourned.)
20
21
22

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1 CERTIFICATE OF NOTARY PUBLIC

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

3 the foregoing meeting was taken, do hereby,

4 certify that the proceedings were taken by me in

5 stenotype and thereafter reduced to typewriting

6 under my direction; that said meeting is a true

7 record of the proceedings; that I am neither

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

9 the parties to the action in which this meeting

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

11 or employee of any counsel or attorney employed by

12 the parties hereto, nor financially or otherwise

13 interested in the outcome of this action.

14

15 KIM M. BRANTLEY

16 Notary Public in and for

17 the District of Columbia

18

19

20 My commission expires: October 31, 2019

21

22

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