Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: March 22, 2016

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

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Ms. Podziba: Good morning everyone. Welcome back today to day two. The third question we had not gotten to yet yesterday afternoon. I wanted to pick out the third question. Can you open that back up? There should be one.

Mr. Payment: I would like to request that we in our native language it is custom when we come to meetings we do a blessing it's not a prayer of any kind would it be acceptable for me to do a blessing?

Mr. Rooney: That would be fine.

Mr. Payment: Just the way we do is we usually stand because we are closer to our creation. I ask that we stand.
(In Ojibwe) I gave thanks to each of our directions and for our mother earth and water and all that we take advantage of from this earth and then I also used the very ancient blessing which are you my relatives. When we use that blessing it acknowledges our connection to each other and our responsibility to each other. I wanted to start off today with that blessing so that we recognize that we are responsible for each other and brother’s keeper and the work that we do is for all of the benefit of our children that are coming after us. Thank you.

Mr. Rooney: Thank you Aaron. So now the third question on the computer testing, a state chooses to use a computer adaptive test, alternate achievement standards for students with the most cognitive disability it is one percent test for those of you who are familiar
with this in your states how wowed the computer adapted test the student achieving with the while measure students achievement against alternate achievement standards. That's a mouthful of the question for you.

Ms. Podziba: If you could turn your cards toward me that could help. The room is a bit bigger.

Mr. Hager: The question is confusing because the statute is confusing. In a definitely going to ask Martha to clarify as I go because I am not probably going to get it technically. I think I can get the legal piece but probably not the way the assessments are done fully well. So we have grade level content standards and then you also have alternate academic achievement standards that are kind of in line to those grade level standards. When you are doing and
assessment getting the computer adaptive
testing when you are doing and is the
student achieving for the one percent what
is the measure that we are using. The
regular grade content we are using the
alternate academic achievement standard.
That's the measure for the general rule of
assessing student for proficiency is
proficiency based on that alternative
academic standard that is what the intent
of the statute was or the computer adapted
testing. They didn't say it very
elocutiously. There's wiggle room if you
will in the way that the statute is
written that would allow the department to
do what I am proposing and so your
consistent with legislative intent. This
is if you want to look at one place where
regulations could be very helpful in
clarifying the intent for everybody this
would be a perfect example of how the
1 regulation could clarify a legislative
2 attack. If you look at the statutory
3 requirement for a computer adaptive
4 assessments JiAA. This is not for the,
5 this is the regular one okay. It says
6 that it shall measure at a minimum each
7 student’s academic proficiency based on
8 the challenging state academic standard
9 that's the general rule for all students
10 then when you look at the language for the
11 most significant cognitive disabilities
12 which is the little 2 then you go down to
13 little two --
14 Ms. Briggs: Can I ask if we can
15 take a break? I know we are trying to get
16 in another colleague up to the table I am
17 having a hard time focusing on you. I
18 want to hear what you are saying sorry.
19 Mr. Hager: Is there a page for
20 the statutory?
21 Ms. Briggs: Thirty-two of the
statute, the ESSA statute you can find under tab B after six. Then on page 32 to where this section is about adaptive testing. What I will do when we get situated is I will start over.

Mr. Rooney: The adaptive starts under page 31.

Mr. Hager: I should have waited to let everyone get where they needed to sorry about that. The general rule is the assessments in the specific one that I wanted to focus on was comparison purposes is that J the little i, and then a capitol double W little a you got to love it right? What were they thinking where are those congressional people? Anyway, so the general assessment the general definition of a computer adapted assessment that it shall measure at a minimum each student’s academic proficiency based on the challenging state
academic standard’s which I think we would say is by the general standard for that grade level. When you look at the definition for the students with most significant cognizant disability it is little I then you look at little I capitol one the AA so that this is assessment shall meet the requirements of this paragraph including, except such assessment shall not be required to meet the requirements of clause I double, you know, capitol 22 which is the challenging academic standard, so I think the intent by using that again it's not clear it's not using the right terminology because we are talking about one thing one place and another thing at another place. By terms of attempt by exempting the challenging academic standard that means I will use the general full academic requirements, so we are looking at proficiency for a
1 regular assessment for align to the
2 alternate academic achievement standard.
3 We are looking for proficiency on that
4 standard. The intent of Congress is we do
5 the same thing for the computer adaptive
6 test by exempting that Roman numeral two
7 language again, I know it's not clear but
8 I think it's a very critical. We don't
9 want to be having a student that has
10 academic achievement standards to which
11 they are being taught and for which they
12 would be assessed by for the fact that
13 it's computer adapted test to be having a
14 whole different standard and a whole
15 different rule and procedure for taking
16 the computer adapted test. Martha sounds
17 like I got it.
18
19 Ms. Thurlow: I think you got it
20 exactly that distinction and the content
21 we are working toward and how well the
22 student is performing the alternate
achievement standards. You did a great job explaining.

Mr. Hager: Only because I asked you before we started if I got it right?

Ms. Podziba: Are there other comments on question three?

Ms. Briggs: I think this is a relevant place for this question. In thinking about the cat would it be allowed in this regulatory structure for a state to develop a cat for everyone for students with the most significant, it seems like you could or when I read the statute I'm not sure the regulations allow for that?

Mr. Rooney: I think the reading of the statute and Kay could jump in. Is that the state that option not required adaptive test? It requires to have and assessment and an alternate assessment for all students that describe how that assessment is designed. I don't know if
1 we were required of the state.
2 Ms. Briggs: They could do
3 adaptive for the general population or a
4 non-adaptive or unique situated test. I
5 want to make sure that's how I understood
6 it. Then my other question was under in
7 the reg tech C three the very final rays
8 references of other final reports and
9 reports to the secretary. I was curious
10 what those were? There's a reference to
11 section 200.8 under C3 which is clear that
12 the other reports just weren't sure what
13 that means.
14 Ms. Podziba: We are going to go
15 through the reg techs line by line is it
16 all right if we set that aside for now?
17 Are there other questions about number
18 three? Okay then Patrick it looks like we
19 are at the regular techs so Ron do you
20 have another comment?
21 Mr. Hager: I had other questions
or comments about this provision that aren't the question wasn't asked so I'm not sure if now is the time to get into that or if you wanted to go through the regulatory test first.

Ms. Podziba: I would rather have a broader discussion now.

Mr. Hager: Some of these, a couple may fit somewhere else so we can wait until we get to that other point we can. I wanted to comment on we were talking yesterday about students that were performing below grade level that were testing but we never did talk about the potential for assessing above grade level and you talked about the beauty of having that grow and a student seeing them grow. I think the regs you got it in the doors there I think you should play with it a little bit in the regulations. The potential to assess above grade level, and
it does carry over into the mathematics and other higher you know advanced placement classes. We don't want to assume for any student that they are limited to grade level and we might in typical assessments we would stop okay here's our grade level assessment. The beauty of the computer adaptive assessment okay here's my range, but I could potentially have skills that are way over here and make sure that we do encourage the states to develop these assessments in such a way that we can capture that to ensure students that do have a disability or English learners or whoever that have the potential for more challenging academic content that they do it. The way the general assessment requirements are written we are supposed to be looking at assessing higher order thinking skills. This is connecting the dots between the
pre-requisite to assess higher order thinking skills as well as the beauty of the computer assistive testing. My daughter Tammy is a classic example. At third grade she could do Rubik's cubes she was gifted visual spatially, not simple math but higher order conceptual math, but she never did pass regents math because she couldn't do the simpler math, but she never got a chance to experience higher math. It's a way to connect the high end potential, the good as opposed to bad I shouldn't use the phrase. The high-end computer system testing with the obligations to consider higher order thinking schools with the goal of seeing students in advance placement classes this is a tool used for that.

Ms. James: Just to follow up with your statements Mr. Hager I absolutely the computer adaptive test
certainly go beyond a student’s grade level and it really does allow you to access what students know. Part of what I enjoy is really looking at the data in a way you can look at the itemized analysis and begin to understand what concepts and or sub skills the students have grasped.

So for example when I think about my middle grade students previously I think about a sixth grader particularly and his academic level in math alone was that of a 12th grade plus, so just to share with you and just to I guess add to what you were saying is certainly it does allow students the ability to begin to see what concepts they understand and interestingly enough the certain domains he was not at a 12 so it really informs the educators as to how or where the student is thinking and just for me as a school leader what it does is it makes me even more eager and excited to
empower teachers to dig deeper and think about the concepts that we put in front of children.

Ms. Podziba: Ron, you have a couple of issues?

Mr. Hager: There's two more and I will say where they are. The second one is the specific issues. Any computer based assessment including a computer adaptive testing is going to have issues for accommodations and accessibility for students with disabilities. That's the first one. The second one is the question again for any type of a computer based assessment familiarity with the platform upon which it's based and how that affects both students with disabilities and particular English learners. Again, that one is applicable at any computer based platform there is so there's two basic points for the first one the accessibility
issues there is at least a couple and I know I will have to defer to mar that on this because she's the expert. There's some that are unique to computer adaptive testing problems for accommodating students with a disability. Even if we defer the rest of the conversation until later when we talk about the inclusion of students with disabilities in assessments we could do it then, but unique ones to the computer adaptive testing might be appropriate to discuss now I am throwing it out there. Sometime during the course of our time together I definitely want to focus those questions and issues.

Ms. Podziba: Other comments?

Aaron, do you have something?

Mr. Payment: Just a little snip it on learning, so Kurt Lewin talks about experiential learning. When we understand knowledge in a contextual sense and this
is applicable to American Indian learning

then we have a reference to which to

understand the knowledge and so when we

teach in a discombobulated way or measure

in a discombobulated way it doesn't have

the measure to stick to something, to the

benefit of being able to evaluate learning

or assess learning that is beyond just the

minimum of the required to understand does

help you to find out what they do

understand in order to house information

for learning purposes. The one thing that

I will also have learned over the years

that I am concerned about is and this is a

bigger discussion as I supposed than what

we are able to take care of. When we

evaluate learning and it's if it's limited

in sculpt to the standards then there's a

lot of knowledge beyond that that we take

for grant that had we understand in

foundational learning. I will give you
and example I am a high school drop out.
I have an iodic memory. I failed out of high school. The environment wasn't correct for me to learn and I recognized later that there's all kinds of stuff that I don't know. The concern is that with testing that gets you off and what these algorithms moves on beyond the base learning is what sacrificed with foundational learning in that and I don't know the answer to that.

Ms. Podziba: Patrick, I am going to turn to you to take us to the regulatory language, but also to say a little bit about what will fit into this reg and what maybe beyond either this section or regulatory possibilities in general. I'm sorry Aqueelha?

Ms. James: If we look at the language here specifically this part with the most significant cognitive
disabilities. What that word does or what those word DOS it makes me think about idea. What I would like for us to do as a group is consider how does this recommendation align to IDEA?

Mr. Rooney: That's a good question and it looks like Ron wants to jump in. A couple of the comments here are great comments that we may want to hold until we get into issue paper where we are going to talk about including students with disabilities. I am happy -- Martha and Kay can jump in and talk about some of the legal cases between IDEA. The term most significant cognitive disabilities is a technical term that states and U.S. Department of education has been using as a subset of all students for disability who is alternate assessments maybe appropriate but the general assessment may not be appropriate.
Ms. James: Have we defined what that means explicitly?

Mr. Rooney: No, we have not.

It's been in regulation since 2002 when we get to issue 4 B that's one of the questions we have for this negotiating committee. It's something we want to consider trying to define what that definition might be. Foreshadowing what you are commenting.

Ms. James: I don't want to touch it. (laughter).

Ms. Rigling: Each state has defined it not perhaps real precisely but they have defined it. They have issued guidelines for their IEPT's to use in identifying which students with disabilities have the most significant cognitive disabilities for which it would be appropriate to measure their achievement against alternate academic
achievement standard. Those are currently
defined in regulations that have now been
implemented in the new ESSA. There is a
part of the standards part of the statute
that we could look at if that would be
helpful just to get a sense of what
alternate academic achievement standards
are but again that might be something that
we want to wait on until we talk about the
issue paper four.

Mr. Rooney: Martha is there
anything you want to add to that?

Ms. Thurlow: I would say
something similar to Kay. In the past
five years or so it comes to quite a bit
of agreement on how or what their
guidelines are like. We can get into that
in four.

Mr. Rooney: Okay Ryan?

Mr. Ruelas: Thank you. I am glad
that you brought up the whole point of the
IEPT team reviews of various states. It's the IEPT teams themselves which outline the goals and services that show how a student with the significant cognitive disabilities actually making progress toward the general education curriculum itself. So with that said measuring how the student with a most significant cognitive disabilities is achieving at the students enrolled grade level itself is inappropriate. It's basically a more suitable model would be to measure the growth in the assessed alternative academic achievement standards year to year.

Ms. Jackson: This is still a work in progress. I just wanted to know I was doing some late reading last night on EL linguist and some of the limitations of testing which I know you guys are probably more familiar with than I am. I just
wanted to make sure, I am trying to flip through this book to make sure that there is a requirement that the computer adaptive tests that are used follow the same guidelines for all the things Peggy spoke about yesterday in terms of validity and reliability without bias. I am wondering if there's any description of what is required in order to demonstrate that as technology and the implications of assessments using technology are continuing to be learned about. If it's like a certain extent to which things have to be proven not just like we went through and initial claim. I am guessing it's there but I haven't seen specific reference yet.

Mr. Pohlman: I am also curious about the relationship between this and IDEA. I am curious as we talk about students who are listed as ungraded within
their IEP's who may not have a formal grade level for which there is a grade level comparison? Is that of specific concern here as well. I am thinking of the number of students I see that what grade level standards to which it would be comparing, so that's one question I have continued to have as I read these issue papers. The second issue I want to address is that accountability on the alternate standards is also extremely important for authorizers. This is and area where we see a lot of charter schools that have mission specific serving schools with disabilities and specifically those students with the most significant cognitive disabilities. I think it's important for those to have transporting in reporting which this regulation codifies so that they can seek to hold those schools to a high level achievement.

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1 as well for a significantly cognitively
c2 compared students so I just want to stress
c3 the importance of that.
c4 Ms. King: I just had a question
c5 for Martha so I understand there's sort of
c6 two big assessment consortium who's been
c7 working on the alternate assessment. I am
c8 wondering if you can talk about the work
c9 they have done about breaking down
c10 standards so we can measure what children
c11 with the most significant disabilities to
c12 do?
c13 Ms. Podziba: Is that best when
c14 we get to issue four or does it need to
c15 happen when we are talking about computer
c16 adaptive testing?
c17 There's computer adaptive testing
c18 because of this idea above or below the
c19 child's grade level?
c20 Ms. Podziba: I am wondering if
c21 we will have a more informed discussion?

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We don't have to finalize anything so we can come back to this. I think we are going to get a presentation on issue four that may shed some slight for all the negotiators on the questions that are being raised, but I will leave it to Martha and Patrick.

Mr. Rooney: I think it might be better to bucket that question and wait until we get to issue four. I know there's a lot of questions about the alternate achievement standards. I think it's hard for the conversation to go without knowing some of that other context. One of the challenges with all of these issue papers they are all interrelated when you are developing your assessment system. We tried to chunk them into the pieces of statute that we thought made sense. Obviously there's and impact with each of these pieces with the other

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pieces which I certainly appreciate. For the purpose of this discussion it maybe better to go into the text. There's a couple comments made by Ron and Kerri and others maybe things that we want to clarify in the proposed language that we provided that maybe helpful to go through and there maybe other places where some of you may say you want to flag it as we will come back after we know a little bit more in issue paper four is if that's and okay way to proceed.

Ms. Podziba: Great.

Mr. Rooney: With that I was going to read through the regulation and describe it a little bit and then we can stop and ask questions. It's a proposed draft for your conversation to help start the conversation it's successful at the least. I mentioned one of the things hard with these regulations looking at this
1 small piece is that you don't see thousand pieces interact with the other components.
2 I described this a little bit yesterday that there are existing regulations that we were proposing to try to build off at the starting point so in this components here you see lots of cross references to other parts of regulations and I will describe what those pieces are when we talk through them. Please ask questions but for your reference I think if you look at the issue paper six just to give you a sense of how the pieces fit together we are not going to go through issue six to give you a sense of how they go together. The existing regulations with some of the red line text for the simple updates with the E SSA language. When I reference 2000.2 if you look at issue paper six you can see what's in 200.2. We are not going to go into detail right now because I want
us to focus on the language here in front of us. I did want to set that up for you.
Okay. So this would fit into 200.2 at a discretion the state may administer the assessments required under the session in the form of computer adapted session if they meet our requirements of and 11-point B2 J is the term I use. The term Ron pointed to earlier pages 31 and 32 of the actual statute itself. Then number two computer adapted assessments if the state child abuses the computer adapted assessment must one or I measure must measure a students academic proficiency based on the challenging state academic standards for the grade the students are enrolled and two, maybe measure the students academic proficiency in growth using items above or below the student’s grade level providing they maintain fro efficient to make a determination of grade
level proficiency and meets our requirements of subsection 200.2, 2000.6 and 200.8. This item is trying to say that if you have and adapted test you must measure the states grade level achievement standards and growth toward those standards is one and two that the state may also include items that are above or below the student’s grade level and the piece in red is the piece that we added from the statute that student, the test when includes above and below grade level content must make sure it's providing a valid measure the point Audrey is making earlier about having a valid grade level if it's providing above or below level content. By representing 200.2 it's where we talked about the valid reliable assessment 200.2 and also that it's accessible. In 200.6 is where we talk about accessibility and accommodations for
English learners and students with disabilities then 200.8 is the section about student reports and itemized students.

Mr. Chau: I am just wondering based on what Dr. Carr mentioned yesterday regarding educational and psychological testing whether the language we include, it includes valid and reliable and not the fairness piece. I am wondering if the fairness piece might be added to this language also just so that it matches. So I am wondering if we should add that third element around fairness to this language because we have the valid and reliable piece but not the fair piece of which I think would address some of what Ron mentioned earlier about needing to be accessible. I understand that it's connected to the 200.2 and 200.6 but I am wondering since we have that sufficient
valid and reliable information I am wondering how we might include fairness as part of this language also? Just to keep it aligned with some of the expectations?

Mr. Rooney: I think that seems like a reasonable addition.

Ms. Jackson: So this build as little on what I said earlier and what Derrick just said which not only so it sounds like it is written that these tests have to be like adequately screened and monitored. I also wonder about the fairness and this is hard to measure if the same way if you even if you are a native Spanish speaker if you are not being instructed in Spanish and give a test in Spanish even though you are not proficient in English. It won't help you to prove anything more than you learned same thing in my classroom. I have students who haven't had much access to
technology or adequate exposure to
technology in school. If you give your
entire assessment on a computer without
ever having written and essay on a
computer or practice moving items on a
computer some ways being, the assessment
being delivered in a format which you have
adequately been exposed to can manipulate
the results. I am not sure how you can
exactly put it in there? It's something
that the group can consider. Then a
second point under C3 I am wondering is
it's important to note that those reports
are then used for accountability purposes
because the grade level proficiency scores
have to be included in accountability. I
don't know if that's excessive to include
it.

Mr. Rooney: I hadn't gotten to C

3 yet maybe we can hold that question for
a bit I appreciate your point.

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Ms. James: Just referencing the document 200.22 I the question I have is how are we defining accessible? What I am thinking about is specifically are certain schools where I believe I am looking for our name Mary mentioned yesterday in regards to band width and I'm thinking in regards to resources, technology resources building upon a statement that Audrey mentioned which is are we, how often are we preparing students to engage using technology so that they are properly prepared to demonstrate mastery of a content versus demonstrate can I actually highlight and or click the right button. How are we defining accessible here?

Ms. Podziba: Patrick, do you have an answer?

Mr. Rooney: I don't think we defined accessible. I would like to hear more conversation from the group about
that?

Mr. Evers: I am not going to do the accessible definition. I want to go back to the fairness piece. I love fairness. I think fairness is very cool.

Is it authorized under the law A and b if it is or isn't what are the implications in including fairness? This is a huge shift in maybe it's a great shift. It would be great to know what the implications are for states and local districts if we have fairness to the definition or the criteria.

Ms. Podziba: Patrick, do you want to respond?

Mr. Rooney: I am speaking quickly on that question because the language that we are proposing that we propose for this conversation is say that the assessments, if the state chooses to do and adaptive test it must mean all the
1 requirements in 200.2 and 200.6. It means
2 that the states have to demonstrate from
3 thing experts the same degree of technical
4 quality as they would for their fix or any
5 other test they administer. I don't know
6 that fairness would change anything about
7 their requirements for what the state
8 assessment will have to demonstrate. They
9 have to demonstrate it's accessible to all
10 students which is what is in 200.2? I
11 think I will also say the new APA
12 standards do have a section that talk
13 about validity, reliability and fairness
14 as a key components of the assessment and
15 the development of assessment and Peggy
16 could probably speak to that if you
17 warranted more information?
18 Ms. Podziba: Would you like more
19 information Tony or are you satisfied with
20 your response?
21 Mr. Evers: I would like more
information and I think my partner over here would like more, too.

Ms. Thurlow: As I said yesterday when they rewrote the standards for educational and psychological testing they completely revamped all fairness in as a third foundational piece, validity, reliability and fairness. You can't make valid interpretations from an assessment if it is not fair for the student in terms of accessibility, accommodations and cultural aspects, et cetera.

Ms. Carr: That comment was exactly what I was going to say, validity cannot be achieved without fairness, so it is a necessary but not sufficient conditions but you absolutely need it to obtain a valid and reliability assessment.

Ms. Rigling: My question is that I am wondering whether Martha or Peggy can address the psychometric definition of
fairness. I am worried that maybe we are thinking of fairness in a more colloquial way and whether there is in fact a psychometric definition and then characteristics of and assessment system that would demonstrate whether fairness has been achieved. I just wanted to point out that the statute I was looking for it but it does require assessment systems to be to incorporate national technically recognized standards. What we interpret that to mean are these standards by American psychological association and ADRA and -- Peggy and Martha have been talking about.

Ms. Carr: I think it would be important for us to look at the exact language in the joint standard so that we are informed by the good thinking of many many experts about how the phrase this.

Can I say that fairness in a psychometrics
sense means that the person is not inhibited in accessing the questions or admitting their responses by some -- that are not relevant to the domain of interest, so it is, it would be unfair if the student would be given a technology or a device that they were not familiar with or did not have as much familiarity with the infrastructure they were being asked to admit their response on? That would be a concern that I think the developers should take into consideration. There's lots of research now that shows that there is a sort of a mode effect for paper, pencil and computer adaptive testing such that you people would not have familiarity with devices with answer lower. I think it would be a fairness issue that the developer would need to address.

Ms. Podziba: Okay. Tony, do you feel like you got your question answered?
Mr. Evers: Thank you.

Ms. Podziba: I am sure we will come back to that.

Mr. Hager: Now the cat is really out of the bag. That requirement has existed already in ESSA. That has not been happening. It's one of the biggest problems with any of the computer based platforms that students both English learners and students with disabilities are taking these tests on platforms for which they are not familiar. They are being tested not on what they know, but based on their familiarity with the platform. You got huge problems just generally you can computer facility for some people than awareness of what the features are on the assessment. You have got students with disabilities that have their own assistive technology they use day-to-day in the classroom, and they are
using a whole new platform to try to
figure out what those rules are and what
those reel problems are. Think about
moving from windows 7 to windows 8 with
those tests and then think about a student
that uses certain software, it could be
other text of the speech platforms after
other things and they got all of that
familiarity, and now they are going to be
using a platform whatever you will use
that has its own system that has all
different rules and different procedures.
It's like moving from windows 7 to windows
8 on a test. That is it's definitely a
fairness issue and it's supposedly already
included in the peer review process for
the test developers. What I am saying is
it's not really happening. That's a huge
concern that we have and I will let the
people from the other communities speak
too. This is one of the biggest problems
for getting just generic accessibility but
platform issues itself. One other one is
the inoperability if I have my assistive
technology that I am used to and now this
statute requires inoperability section 508
which applied to all the test developers
had acquired inoperability since the year
2000 when the first regulations came out.
Interoperability is a new concept to ESSA,
but it's not a new concept to text
development any federally funded test
development. Those are some of the issues
that I plan on talking about a little
later. Since we started I figured we
raise some of these now. These are huge
barriers to allowing students with
disabilities to demonstrate what they know
as opposed to what their knowledge of
platform use is?

Mr. Rooney: I am hearing a range
of questions that are concerns that are

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1 about not necessarily computer adapted
tests but actually computer based tests
that are about the accessibility of the
tests and the ability of kids to use the
technology and engage with the whatever
the test platform or the test is taken. I
wonder if I could ask a clarifying
question about whether there's particular
concerns you have around the accessibility
and technology and an adaptive test or
this is something that maybe we could put
a pin in when we get accessibility about
all tests if they are computer based that
it's something that should be addressed
and we should make sure we are attentive
too in our conversation about it. It's
not necessarily about the adaptive test
unless there's something in particular
around the adaptive test and it's
technology that people are concerned
about.
Mr. Hager: That was my earlier question and I did ask if Martha could explain what those issues are at least let's deal with the specific issues regarding computer adaptive test. It flows into this fairness issue. I don't mind deferring on the other points if we could address some of the specific problems for computer-adapted tests. I think Martha is the probably the best person to talk to that.

Ms. Thurlow: I will be quick. There's technology issues and I can separate those. Some I heard about the computer adaptive test. They relate to student's technology platforms are whatever issue there is are with the vendors developing them they are not able to provide the accommodation for example a student who is deaf or hard of hearing who needs to have a human signer to administer
the test. Typically to get the good
signing of the test you want the person
who's signing interpreter to be able to
look at the items before they sign them to
the student to make sure they don't sign
something they shouldn't be signing and to
make sure they are hearing it as close as
possible to the language of the item and
getting the intent of the item. It's very
difficult to provide that opportunity on a
computer adaptive. It's more on the fly
signing of the test so then what the test
administrators decide to do is we will
develop a form they do this for Braille as
well. We will develop a separate form
that's not computer adaptive so it makes
it a different testing experience and
probably not giving the same opportunities
for the student who has a non-computer
adaptive versus computer adapted. It's
related to the limitations in the
technology, related to the computer adaptivity.

Okay, so I am hoping that we can have a really full blown discussion when we get to a needs issue four so I am going to see if there's new issues related to computer adaptive testing. I think Ms. Briggs you are up next?

Ms. Briggs: I was jumping in on a topic on the issue of incorporating fairness as a specific new concept here in this reg. In general I think that one of the things that Peggy mentioned yesterday is that the APA updated it's standards to include a number of things and those standards are specifically referenced both in statute and regs at large, so I think if we want to try to be clear and regulations introduce A new concept that is clearly causing some confusion but that the fully explained, and I imagine in a

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full book it might not be the
clarification we want here. So my
recommendation would be not to include
that specific phrase that's incorporated
in the standards that are referenced in
the number of places in statutes and regs
throughout.

Mr. Payment: So in statistics
there is a word superfluous. Let's look
at the construction of the question first.
If there's anything in the question that
isn't related to what you are asking it's
superfluous, and it could be bias and lead
to a different outcome when you are
evaluating or assessing. Extend that to
your modality for how you are evaluating
and if there's something in the method
that you are collecting a response to the
km pewter assisted technology or through
oral technology or and oral version of
word or whatever it's just as, it's just
as intentionally detrimental as having a poorly constructed question. So the question should get to per similar any means evaluating what only what it's intended to so it doesn't have that other fluff in it. When we talk about fairness it disagree a little bit. I think there's guidance needed in the language because we want to get to the concept of fairness which is beyond biased, and the question is evaluated. It's correct and can't be valid if it has this other stuff that doesn't lead to and outcome. I think the regulation should be sufficiently clear that there's this additional concept that needs to be included and I don't think that it should be left out because I think using the term fairness is invite ago whole bunch of problems with states because of the concept of fairness as something as a liberal concept as opposed
to a validity concept. So somehow we have
the find the right terminology to use that
promotes the validity but doesn't confuse
it with this liberal concept of fairness.
Too easily states right that off. What's
lost in it is the concept of validity.

Ms. Podziba: I would also say
it's too early for us to get to that
point, but sometimes negotiator rule
making groups ask for certain language in
the preamble to explain something in the
regulations, if it doesn't make sense to
put it in the regulatory language what's
in the regulatory language can be further
explained with preamble language. We will
keep that as and option for the kind of
thing that you were just referring to.

Ms. James: Yes so I am looking
at section C 2II and the first portion of
the red print provide that had the
assessment obtain sufficient valid and

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1 reliable information. I just want to go
2 back to that point and say that when I
3 read that I immediately think about two
4 words, process versus product. And what
5 this sentence does for me or this
6 statement does for me is immediately think
7 about the product. The process is what I
8 am concerned about. The process includes
9 me thinking about students have and I know
10 that this is another section so if it's
11 not appropriate I am happy to wait. I am
12 thinking about the process in which it may
13 take a teacher to teach a nonverbal
14 student and or a student with I will use
15 this coin term significant cognitive
16 disabilities. How to access that, I mean
17 how do you get to a point where you can,
18 states receive data that is aligned to
19 valid and or reliable. How do we get
20 there? This statement nails on what we
21 want the product and I think as just a

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principle I am often finding myself doing what sue says she loves best which is absorbing and enjoying the process, not absorbing the process. I think it's the education period well, that's the education term that a lot of us don't think about which is that variable called time, and so I am not sure if this is and appropriate statement but I thought it was important for me to share my thoughts.

Ms. King: Yeah, this may just go in the larger accessibility conversation too. I wanted to flag thinking about universal design for learning principles if there's any place that fits in and makes sure that was part of the fairness conversation as well. If you think that if there's nothing cat specific that we should be addressing there then I'm fine to move this to a later piece.

Mr. Rooney: I will point out
universal design for learning is
specifically one of the questions around
issue paper 4A that if others think that
there's something about universal design
for learning which is just broadly
speaking for those of you that aren't as
familiar with as some of your colleagues
on the panel. It's about the process by
which the test is designed in order to
think about the needs of the students when
you are designing the items and what is
the content you are trying to test.
Martha I don't know if you can add
anything more eloquent?
Ms. Thurlow: Multiple means of
access. I won't say all the words but yes
during design, during administration
it's -- Inaudible.
Ms. Podziba: I am going to take
this last two comments on this issue, and
Patrick I think you have a lot of feedback
and we will see this again, and perhaps there will be more discussion of this when we get to the issue four.

Mr. Rooney: We didn't get down to all of the reg. I feel like Ron had a suggestion under C 4 around and adaptive test for and alternate assessment for students with the most significant cognitive disabilities. I would love to hear if he has a particular suggestion for that? I don't want to cut off the other two comments first.

Ms. Podziba: We will take these two comments and see if there's a regulatory suggestion on that; is that your question?

Mr. Rooney: Yes.

Ms. Goings: Regarding accessibility we can talk about that in section four, but I just want to put the thought in your minds right now that there
1 is resources there are resources available
2 through the assist and instructional
3 support personal and para-professionals.
4 Those systems are built in and of course
5 they are included as part of the
6 accommodations for IEP. We can talk about
7 that later when we get to that section.
8 Know there's assistance available to help
9 in that process.
10 Ms. Podziba: Thank you.
11 Ms. Jackson: This might be a
12 little nitpicky but we have been referring
13 to 200.2 and universal design for learning
14 on the second page. I was curious it says
15 under this section it refers to UDL and
16 then it say it is term universal design.
17 It could be the people that I work with
18 but those are in some ways different
19 phrases universal design for learning. I
20 am wondering if the term in quotes is one
21 or the other? That's somewhat related to
Mr. Rooney: I am happy because I think both you and Ms. Briggs had a question about the reports in 3 so I can try to address that briefly and see if that is helpful and then move onto Mr. Hager. The termination under section 11 needs to be II of the act and of a student’s academic proficiency. I said for the grade that the student is enrolled and must be reported in all reports required in any other reports to the secretary. I think our intent for that our assessments are providing data that can be used a number of days. The assessments we don't try to we are not prescriptive on what that means. We don't
get into the use of the data specified here and the accountability system. There were regs under the no child left behind account and ESSA has it's own kind of theory of actually give states expression to develop their accountability systems. Our intent here is to make sure that where the state is providing reports to parents, teachers and the public that they then would be reporting the grade level achievement in addition to any other scores that may include either your growth toward the standards or above or below all item ins which may provide different kind of information that they can report to parents in the public that would be they would have to include grade level achievement score ins addition to any other information that the state chose to report as part of the assessment results that addresses both you have questions I
1 believe?
2 Ms. Podziba: Audrey or Kerri any
3 follow up on that?
4 Ms. Jackson: That answers that
5 question but not the UDL universal design.
6 Mr. Rooney: I would like to
7 hold. One of the questions we have is
8 about universal design. I am happy to
9 figure out what the right term should be
10 when we get to that. We think we may want
11 to change it for universal design for
12 learning but whether he discussed that
13 later.
14 Mr. Hager: I did have a comment
15 or question about the C 3 language to make
16 it very clear that in the reg itself that
17 it does include as you and add the phrase
18 as used for accountability purposes which
19 is what your point was. I think we want
20 to make it clear in the regulation
21 specifically. Part of the problem with I
wasn't anticipating that we be looking at the language of the regulations now because I have been getting all sorts of texts and e-mails and notes about the language so I don't really want to go too much detail on this now because it is a little bit hard to do.

Ms. Podziba: Is it worth taking a minute conceptually giving your opinion about it and maybe we will move on. I understand it's early to see reg language.

Mr. Hager: We would like to see that phrase accountability purposes the reports specifically referring to that language. I think that's what Audrey was saying and that's what other people are telling me conceptually. The other question that's more general is that we talked yesterday about how can we provide guidance about how we would use growth and we want to make sure that the
accountability purpose does cover the
grade level standard of reporting and
accountability but also how do we or can
we give credit for growth in this proposed
regulation doesn't do that. I don't know
if you are going to try and do that later.
I want to make that comment as we are
looking at the lens we got, again
conceptual. The last one which is the one
you asked me about where did this blue
language come from again?

Mr. Rooney: That's the statute.

It's word for word from the statute.

Mr. Hager: When I read this I
put a note to myself does this do it? The
last phrase regarding for students with
the most significant cognitive
disabilities either English language or
either the AAS people regarding the
student proficiency must be reported in
the same manner that such data otherwise
would be reported for assessments that are not computer adapted. I think if you get at a phrase something like that the assessment should be based on the same standard as if it was not computer adapted. The proficiency standard if you have something like that in there because you already got the exception, if you add that qualifier into this exception I think you will do it without giving you specific language does that make sense Patrick and Kay?

Mr. Rooney: Can you repeat the suggestion?

Mr. Hager: Basically in the language you talk about must be reported in the same manner that would otherwise be reported for assessments that are not computer adaptive. That's the language we are trying to look at in measuring the proficiency standard not the reporting of
it but the assessing of the proficiency on
the standard would be the same as if it
was not computer adapted I think that does
it without doing a lot of language and
qualifying I think that does it.

Mr. Rooney: Okay. We are happy
to keep this language clearly and we have
a lot of feedback with you and we clearly
are going to have to go and consider how
we might revise that language for that
line and provide it back to you if that's
okay?

Ms. Podziba: Thank you. I think
then we are ready to move to issue paper
two. The exception for advanced
mathematics assessment in eighth grade.

Mr. Rooney: I appreciate
everyone's thoughts on the first issues.
Second one is exceptions for eighth
graders taking advanced mathematics. A
number of states requested -- students
that take advanced math associated with of course and advanced math class they are taking in eighth grade in addition to -- backing up one step for most states when they develop their assessment system they have general content they define what each student should learn in grades 3-8 or actually K-12 they design their assessments to align for the standards. There's and eighth grades assessment and it's aligned to the content that the states adopted for eighth graders to know. Some students they know it's and increasing percentage. It's about 41% based on the latest data based -- 41% students are taking algebra one or more advanced math by eighth grade. If the state has and end of course test that measures the algebra content it makes more sense for those students to take the algebra one assessment in place of the
1 grading test. Typically what happens in
2 the past is and eighth grader who is
3 taking an advanced math course they have
4 two options they could either at the end
5 of eighth grade take the eighth grade test
6 based on the eighth grade content and also
7 take the algebra one test and they would
8 use the results from the eighth grade test
9 in the states accountability system and
10 they would essentially bank or hold the
11 results in the algebra test until the
12 student was in high school and use that
13 algebra one result in the states
14 accountability system or the students
15 could take the eighth grade test in eighth
16 grade even though they in algebra one and
17 then later once they get the high school
18 they would take the algebra one test,
19 content test and use that for
20 accountability a couple years after they
21 taken the algebra content. None of those
are optimal because the students are
taking a test they are taking two test in
eighth grade or they were taking a test
couple years after they had the content.
It was a misalignment to where the student
was using and how that was factoring into
the accountability system. It could also
serve as a disincentive to have more kids
take out for one earlier. The system they
wanted them as many kids as possible in
eighth grade to do well on the test which
may discourage some kids from taking
algebra one from other kids from taking
it. In order to address these under
lining incentives many states asked for
and Department granted as part of the
states ESSA the opportunity for states to
have those eighth graders taking advanced
math take the higher level math course
associated with the course they are higher
level test associated with the course they
are enrolled in provided they take a
higher level math course and higher level
math assessment once they get to high
school there's about 20 states I think
that's right that took advantage of this
through the ESEA flexibility plan that I
have been doing currently. I think one of
the concerns we have with this approach is
and so obviously with this is now
something that's been written into the SSA
to let 89 graders take advanced math
courses in place of the eighth grade test
in the state. One of the implications
where some students are provided to take
the higher level advanced math course in
middle school but gives them a
disadvantage and creates perhaps a
bifurcated system where some kids are
given the opportunity to get advanced math
courses but some students are not but you
are holding kids to different standards.
One of the thing that is the ESEA flexibility plan -- they have the opportunity to right -- particularly for rural urban areas or manage students who have lower rates of taking advanced courses in middle school. I think the other thing that we wanted to raise as a question before we start into the questions in the paper is how we ensure in the cases where this states are doing this and they are taking different math tests in high school that they are using in their accountability system and how do we make sure the tests are high quality and they are valid and reliable measures of what students know and do for whatever it is that the test state is use anything place of the end of course test that the kids are taking now in middle school. With that context I wanted to jump right into the questions this is another one.
where we proposed individual language for
the groups considering. I would like to
start with the questions. I think
instruction the conversation and
understand where people have about the
topic before we get into the proposed
language that we have if your
consideration. The first question is how
I might ensure limitation of provision
ensures all students including those from
under served populations have the
opportunity to access more challenging
course work in middle school and high
school in order to take advantage of this
exemption.

Ms. Pompa: Let me applaud you
for thinking about these conditions that
need to be in place if kids are going to
be tested. You said you weren’t ready to
jump into the language, but the language
which I think is part of the solution. In
the language you talk about providing the
opportune I. I think that needs to be
strengthened with some detail. Providing
the opportunity is pretty generic and it
can be construed in many many different
ways. The kinds of things we need are
parent education programs for parents
who's kids historically in community
groups haven't taken advanced level
courses creating the academic conditions
such that kids are prepared by the time
y they get to eighth grade to take advanced
courses. Things such as this that expand
provide the term opportunity. I do think
that's too general and doesn't give you
much information about what needs to be
done.

Ms. Ricker: Thank you. I
actually think just very quickly about the
language providing opportunity is
incredibly passive. It could be we
through it in a course catalog that we only wrote in English. That's not I do think it needs to be strengthened. My question I will start with the like recognizing the misalignment in eighth grade potentially for students taking algebra one. It means there's a misalignment in earlier grades as well. So I feel like it is actually a more complex it's more complex situation than just like an eighth grade cut off. And so I am wondering how we address you know the students who obviously didn't sort of just get to eighth grade and suddenly start taking advanced math courses and perhaps started in third grade, fourth grade or fifth grade, et cetera where they are also taking their while they had the opportunity to stake standardized math tests. And I am wondering how you think this would actually increase opportunities
for students in rural and disadvantaged areas if they have traditionally have not had the same access to advanced math courses how you would think this would improve that access?

Mr. Parker: Yes and in building upon this and in the conversation we had yesterday from and equity and access standpoint. I think to the question as the states that far as under served populations in schools in demographically diverse areas. I think we mentioned yesterday as far as these opportunities. Teacher turn over is a realistic issue when we talk about courses, course offerings and certifications and that limits some student’s opportunities in such schools and in these populations. I think that it's critical to readdress that teacher turn over issue and in un-served schools and populations because of the
lack of opportunity that can exist in these higher-level math courses. I also had a question about the regulatory language so I could like to hold off on that though.

Ms. George: Sure. So I just want to echo a lot of concerns that have been raised about the resource equity and issues particularly what Audrey said about the foundation leading up to eighth grade math and the access to and opportunity to take the course work in preparation to take that advanced eighth grade course if that's even available particularly in the districts serving high proportions of African-American, Latino, low income or rural students. My question is for the states that were granted this waiver earlier was there any review of the demographic information about who was able to exercise that exception?
MR. ROONEY: I would like to hold on answering that. I need to check with colleagues about what kind of information states give us. Some states give us data on course taking by different demographics in the state. I think others talked about policies they had in place or on-line or distance learning courses that they made available for rural areas. I don't know if there's more information I can get from you but that's a general sense.

MR. WILBANKS: Thank you. I am certainly appreciative of the concerns that have been expressed. This is an area where at a practical level where we educate kids. I think in do for all students. We are not going to be able to solve all the issues that we sometimes talk about but I don't believe we ought to limit those districts or schools that really can make this thing work. I think
it can work and what I see us doing as a matter of fact in my district we have a number of students in eighth grade that take algebra. Now under the present law that I have to take the regular eighth grade exam plus the end of course algebra. So this the language in this law does allow for that to be eliminated which I think is good. So given the cautions that have been expressed in certainly I don't know how we would eliminate all of those. I do think this has a tremendous opportunity to really allow us to get students and taking more math in high school. They take more math in eighth grade and they can take and extra math course. As we push the stem and the global competitiveness it's things like this that I think we have to look at as overall positive and I applaud this regulation being in there and what it will
ask to do. Sure we will have to make sure
that students have access and I don't know
how we could in good faith limit or not
allow this to happen.

Mr. Evers: I want to address
this issue I think we are on question one,
but I'm not sure this issue from a local
point of view and then at the state level.
I just think frankly the language in the
regulations around what defining what
advanced is kind of old school. We as a
state and as a nation we looked in that in
different ways and integrated math is and
option that some local districts choose to
use and then that definitions describing
what advanced is not consistent with that.
I think frankly we are doing great
disservice to local control with what's
proposed. Second of all from and I have
heard all the issues I heard with everyone
one of them I guess I will be by the end
of the third day I will be Mr. Negative Evers. (laughter). I find it difficult that we will add conditions that are not explicitly called for in the statute and if that's the way we are going to go we will spend a lot of time doing things that may not work. I just use that as a plea through you know keep that in mind that our job is around dealing with conditions that are explicitly in the statute those two things. The local control thing is huge. I just think its old school the way we described advanced mathematics. I don't think we can do it as a group of 20.

Mr. Hager: I just had a comment about the question how do we encourage it's kind of indirectly I guess and it may not be appropriate for the actual regulation but maybe in the preamble the Department of education did come up with a policy guidance about students with
disabilities and access to the advanced
placement classes. In terms of
encouraging it in a minimum you want to
make it clear that school districts should
be complying with that policy guidance
about not limiting students with
disabilities to take these classes
including if they require related aids or
services to benefit from the class. I
don't think it's appropriate for the
actual regulation. We definitely will be
appropriate in the preamble. It's kind of
connecting the dots.

Mr. Cheeks: So if we are
addressing the question that's at hand in
terms of how might we provide support and
information to help implement this
particular portion of the law. I think
there has to be from philosophical
standpoint a shift in thinking that lower
under represented low performing students
cannot succeed or be successful in taking advanced courses. We have force that had issue and I know a number of my colleagues have stepped outside of the norm and in low performing schools and encouraged and in some superintendents have forced the issue of requiring AP courses that ultimately challenge the lower not so successful children to take courses that are more challenging and ultimately ended up with a better outcome. The shift had to take place with the leadership and understanding that children can learn regardless of their current situation. In implementing this particularly when we talk about the issue of equity there's a knee jerk reaction to think that low performing kids aren't going to be successful in things along these lines but somehow we have to and I don't know if it's in the preamble or if it's in

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necessary guidance that goes forward but somehow encourage the shift and encourage the thinking around states as well as school districts beginning to force the issue of AP courses. I applaud the aspect of the law and not penalizing the child that does a step forward to take those courses in an earlier grade by having to take a secondary test for exciting high school. Particularly when you look at it and I think it was Alvin when mentioned stem and esteemed programs. In the short future we will find children well into their associate degrees and haven't finished college. Somehow we have to continue the conversation to challenge people to think differently about our normal mode of pushing advanced placement courses and assessing kids on those lines of earlier in the school year.

Mr. Pohlman: Great, so I have
got a couple of questions that actually are not outlined as discussion questions but as I read the regulations some things popped up for me. At the school level, as a high school administrator I have questions about it. The Department's intent to state that the eighth grade student may only take the statewide, the assessment in high school used for statewide accountability. For instance because you are only required to test once in high school many jurisdictions have narrowed that to have only algebra one or only gee I don't mean met try. If eighth grader takes that preclude and eighth grader in the district from taking the algebra one assessment in eighth grade for some sort of accountability because like I don't think that's clear yet in the regulations and it could have two perverse impacts. One being that students may not
be able to take advantage of this because of the high school assessment that it's chosen and two I actually have more concern in the secondary and personally it can encourage over testing. It can encourage states to have moved to all three assessments be used for accountability for high school in some way or another. I realize that's probably protected in other parts of the act. This is how it exists and if the regulations are trying to spur an innovation. It should be clear about that that's the state level accountability assessment. The other issue that is not discussed and again gets real practicalities is that there are jurisdictions that experience a lot of mobility in the way that students move between LEA's. So when I read these regulations with sort of a hat on thinking about large districts it just makes total
sense right? The student moves from
middle school to high school in the same
jurisdiction and same LEA. That's the way
that millions and millions of students
move in our school systems. There's also
millions of students that don't move in
that district. It's one example. There's
other jurisdictions that have those high
levels of mobility. Those LEA's if their
assistant delivery systems are not aligned
receiving students from another LEA grade
from high school we may not be able to
administer the next assessment that's in
line for that student to take place. So
we could miss those students from and
accountability perspective and we may not
know what to do with them come testing
day. There's a lot of mechanics to this
that need to be further defined and what
we are really trying to do.

Ms. Evangelista: So New York
currently has this in place and to Janel's point I have zero of my students have ever come in and taking having the eighth grade opportunity to take advance courses all of my students are EL's. I am not a New York City principal. I am a New York City public school parent. My son is currently looking at middle schools, and in the schools we are looking at there are opportunities of course to take those courses, my son has those opportunities to take those courses in order to take those courses they are often based to Mary Cathryn's point on how students are scoring on those yearly tests previously for EL's where those assessments are not always in their native language or new arrivals. They are often completely unable to take those courses because of how they scored previously.

Ms. Mack: Being one of the
parent representatives. It's -- is something that you can regulate. A lot of times if you include the PARENTS to kind of piggy back on what Mary said just get to eighth grade and start taking tests. A lot of times if you inform the families prior to that and have them involved in the process that can bring them up to the part of that point. I wanted to give the example I got a ten-year gap between my oldest and youngest. I had already been through the process of forecasting but when my youngest came to the point of just wanting to take junior high science the recommendation was that she would take physical science and at that point she was already in an advanced science course in sixth grade, so I questioned the teacher as to why that decision was being recommended, and he said something like well she tends to daydream or something
like that even though she had an A in the
class. Had it not been for me being a
helicopter parent, and I will admit it, if
she took that physical science class in
eighth grade that would effect what she
would take in high school. If she wanted
to be the genetic counselor, she would
want to be that would prohibit the AP
classes that were necessary way making
that decision in elementary school could
impact that. A lot of times if you
include the parents and educate them and
make them part of the process we could see
some of the eighth grade students being
able to take that course at that time
placing that expectation on them. The
second point I wanted to make is that we
can also explore some programs that are in
place and in other districts for instance
the avid program advancement via
individual determination that takes some
of those middle role students and you give
them special tutoring and teach them how
to take notes and move on and take courses
you wouldn't be expected to make based on
their current scores and you find that a
lot of times they do score higher. I just
wanted to put those two points in.

Ms. Podziba: Thank you.

Ms. King: So I just wanted to
sort of support something that Alvin had
said and also Mary and Marcus and lots of
other folks. It's great we are getting a
consensus. This is a good example of why
we don't see equity and excellence in
conflict but we see them as complimentary.
We think we can encourage all students to
take more rigorous courses aligned to
rigorous courses we don't think we need to
limit some children in order to expand the
opportunity for other children to be able
to do that. I just wanted to reinforce
the point about having more specific language about what it would mean to make this accessible and this opportunity accessible to more people and to highlight that I think sort of consistent with Marcus' point and others that this idea of expanding access to rigorous courses and rigorous assessment is consistent with the direction that Congress was taking title one moving and this is sort of along the history of the trajectory of title one moving away from basic educational programs and moving away from remediation and pull out and towards thinking about rigorous preparation for what comes next in the child's life. I didn't want us to fall into the false choice of whether some children have access or no children have access, but in instead think about creatively how do we ensure more children have access. We do know through the civil
rights data collection that there's currently inequitable access. I am sure that the Department of Ed has data about who did already participate. I think that it would be really ashamed to miss the opportunity to really make greater progress and great opportunity that some children have to make more opportunity for other children.

Mr. Chau: I would like to go back to something Tony mentioned before and I agree with them that there's a danger here that some of the additional language is maybe over reaching some of what the expectations are and I can understand the intent to provide more equitable access. I think that the fact that the current regulation is providing states with the option of not being penalized for providing students with appropriate test and not over testing.
students is in of itself for states to continue to do the work they are already doing. I would like to emphasize to know that I know that with the regulations the way they are that there's only one assessment required at the high school level. I know that not all states have any course assessments any more. I know our state in California had moved away from the end of course assessments and moved to the course at the end of the 11th grade. I want to come back to the idea of the math standards as well. We haven't really talked very much about them. They have changed significantly over the past few years. Our states have adopted significantly more rigorous standards for all of our students. I would like to emphasize the fact that at least in California and in those states that have adopted the course standards, the current
and the new math in our grade 8 math standards are actually more rigorous than the old algebra one standards. Let me say that again. The new math grade 8 standards that are required for grade 8 math are more rigorous than the old algebra one standards especially in those states that adopted common course standards. Our states are already making efforts that students are receiving a more rigorous math instruction. I would like to emphasize that the authors of common core math have actively discouraged acceleration of students too early in the middle grades because it can be detrimental to success later on in more advance math courses as well. I would like to put those two points out there to emphasize that our states are making efforts around preparing all the students for more rigorous success in math and then
I would like to emphasize that some of our states have already made efforts to legislation late some of what the intent is behind this additional regulation and I know in California there's a senate bill 359 within California the California math placement act that actually requires every district to define ninth grade math determination with clear transparent policies for all parents and students. So I think our states are making efforts around this. I am not sure if it's necessary to actually maybe add some of this language that maybe is beyond what the intent was behind this legislation.

Ms. George: I think I have a little bit more of a question than a comment. In a long the line that is the concern Derrick raised about by adding language and similar concerns raised by Tony and Alvin. We want to ensure that
this is a meaningful expression that
dates can exercise in given the
information. I do have some real sources
in the availability to meaningful exercise
this option. I am wondering if this is
something that the peer review individuals
team could take a look at in terms of
considering what Lisa mentioned about avid
taking a look at states that are seeking
to exercise this option what other
interventions they have available or
support for students. I am wondering if
during that review process they can take a
look at factors like those interventions
and availability of these courses
including foundational courses?

Ms. Podziba: Let's get all the
comments and then I will bring it back to
you Patrick.

Ms. Pin Ahrens: I wanted to
expand a bit on having the states
demonstrate they are providing the
opportunity to access more challenging
course work. I do agree with a lot of
comments my colleagues said. I want to be
more specific in a few areas. Because I
do recommend that we change the language
in five to talk about the demonstration of
parental and student education programs
specifically in colluding language on how
the information will be shared to both
parents and students. In terms of
parental information I think you know
counseling of parents especially for
parents who are refugees and immigrant who
is are not familiar with our public
education system. I think it is very
important that there's counseling for them
in their native language or through
interpreters or however we think we have
access for them. We understand what it
means for student educational
opportunities further down the line including the trajectory of malt courses they will have access to and the opportunity for them to earn college credit if they take AP and participate in other advanced programs and let's see whether there will be support services and programs provided at the state because their students have not had access to rigorous and challenging course work before the eighth grade. I think also for students because you know there are a lot of students out there especially for students from that speak in uncommon language they act as their own student advocates. I will say personally I was one of those students. My parents had no clue how the public education system worked. I was the one that made decisions on my behalf. Some of them were not the best decisions. I was telling Mr. Hager
earlier how I declined to participate in
gift and I thought that would label me as
a geek and I didn't want to be slapped
with an additional label. I think it's
important for students acting as their own
student advocate. They understand the
implication what happens if they choose to
decline take ago advanced math course or
what support they receive if they do
accept taking advanced math course. So
it's really important to remember those
children and you know assist them in
making these decisions. I would like the
demonstration, the state demonstration
that we are providing equal opportunity to
have that provision of what does that
information and counseling look like?

Ms. Briggs: Wow it's good to
tell about your story it puts a lot of
this in context. I think one of the
things I read in this regulation and
statute that this was intended to address
a unique situation of students
accelerating in math beyond sort of what's
the generally accepted time line or you
know like eighth grade math or algebra
one. This statute was intended to make
sense for kids and parents so you don't
have to take double tests like you have
done in the long history of this issue and
the background. I am curious about how
this because this was in the waiver
process how this was demonstrated in the
waivers whether or not that was meaningful
and because I think the hope here is that
we got more kids to accelerate math
quicker and my daily work I spend a lot of
time thinking about this issue how to get
more children into advanced placement
issue and advanced placement classes all
over the country. I am not sure the
language is the right way to do it. I am
just curious on how this operated in the waiver process.

Ms. Podziba: I have three more comments and then I will give it back to Patrick and then we will take a break.

Ms. Jackson: While we are sitting here talking about this I am getting text from a mother I had a few years ago who is in middle school now. I am going to tell a quick story about her bringing a kid to the table. I am thinking about adult motivations and best outcome for kids for me I go back and forth I love data and picking apart details that's what I am thinking about most of the time, but education is a personal and relationship based process most of the time. This girl who I have been messaging with her mom she recently did not get into one of the exam schools it had to do with grades at her newer
school where she hasn't had the same relationship with teachers and the same opportunities to necessarily thrive. I am just reflecting on what people have been saying is that kids are every person is different and there's no way to regulate that every child will be given every relationship they need to thrive. It's not possible. And the relief I have been messaging with her mom about here is that actually there's a great arts school in Boston where this child is now so excited to apply. She has to audition. She grew to love debate through what we called fraction court in fifth grade. Even though she didn't get into these exam schools she has found a school where she's really excited. She decided fraction court with who's guilty and not guilty and it was her day of shining. The reason I am bringing about my kids. Even though we
cannot be prescriptive in all the elements we cannot bring up enough safeguards to the intention of this components. I think it's important to protect that there's no negative consequence or overt pressure for children to take or not take an advanced assessment in the way the language addresses whether there is scores will be could wanted or not counted. I know that gets into specific details, but as Ms. Briggs was just saying the idea is that more is better, advanced is better and it's not necessarily better for every child. I really want to clarify that. It doesn't mean that I think all kids can thrive. Sometime it is idea that we want all kids to be equally successful in every single detail in front of them. It's not nurturing. Their innate talents are their innate passions. As they get older helping them thrive with their interests
1 actually allows them to have more choices of what they will do in their future
2 instead of saying you have to be equally good with each thing we put in front of you have. There's not a specific recommendation I want to reflect on that.
3 Mr. Ahart: Yeah. I would like to echo a comment that Derrick made about the standards with those state that adopted the common core. I think what this language addresses specifically is it has a different content than states that are a common core. The level of rigor is much higher. More importantly I guess what I am looking at what we are trying to do is I serve a district that has a 75% poverty rate and 20% EL rate and we dramatically increased enrollment in AP courses by over 400% in the last three years. That's been done by a whole host of things not the least by building relationships. We have
students that they are surprised to see in those courses and we have students surprised they are not in those AP courses. It's always applying and trying to apply a level of rigor that's appropriate for every individual student.

As I look at the language and look at what's been added. It seems like a huge over reach and in something that's going to help districts not over burden students with unneeded assessments. It is quickly turning into something from my perspective that looks like something that's going to overcomplicate and make it difficult to do with best work with our students at the district level.

Ms. Podziba: Eric I know you had a comment on language as well?

Mr. Parker: I am piggy backing on a lot of previous points on the language and as previously identified and
from myself as well. I am all for the reg
and having a lot of success of having the
flexibility locally as well as the
opportunity for the students to experience
more rigorous levels. As I look at this I
want to ensure that there's still
flexibility and that flexibility remains
being that for example looking at number
three when it mentioned under middle
school mathematic exception it says in
high school. but yet we have I know that
there are middle schools and we have
middle schools that recognize high school
assessments in middle school. I want to
ensure that number three is not an and/or
limited or overly descriptive there, and
the rational behind that and if some of
this is if I am reading more into it or if
that is inclusive and some of this is
inclusive of we could have it in both
levels? I know it's been noted about not
over testing. In both levels I see a
distinction in middle and high school I
want to ask for clarification as far as
what is the intent I guess behind number
three and or middle school as well
particularly for middle school and
nationally recognized high school
assessments.

Mr. Rooney: Thank you all for
that. I think we got a lot of good
feedback on that question. We are going
to have to think about it for a bit. A
couple of things to react to some of the
comments made. To remind you I know we
didn't go into the text. The blue text on
the page is actually again directly from
the statute and the red text is where we
proposed for your consideration things
that we may try to clarify or may need
Clarification. I appreciate some of the
comments made. To Rich's question about

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1 the end of school test in middle school.
2 This is for eighth graders taking advanced
3 math course who then take the advanced
4 math tests that given in high school so
5 it's very clear that this is for those
6 tests that in your case geometry in DC is
7 taken in eighth grade. That's the way the
8 statute is taken. There's one
9 clarification. If you look down on number
10 three in high school, A little underneath
11 that where it says the student takes a
12 statewide assessment or national
13 recognized academic assessment. The word
14 statewide should have been in red that was
15 a mistake on our part. I want to point
16 that out to you that's something that we
17 proposed adding for your consideration to
18 think about for your discussion. To kind
19 of a larger point that I think you are
20 making which you know the statute is very
21 much focused on eighth graders taking
advanced math course this gets to Janel's point and others were making this point.

This is focused on student’s eighth graders taking advanced math. The secretary does have the waiver authority and this is how states were doing this under the ESSA -- all kids take the same grade math test to provide flexibility. The secretary would have the authority if he or she so chose to provide waivers to state that requested for kids in other grades who wanted to take advanced math tests. The regulation is trying to follow the statute is specifically eighth grade.

I think to Janel's and Kerri’s point and others about peer review and the flexibility context under ESEA flexibility when states requested as part of their plans we asked for a description of how the state was going to make sure they are making advanced math course available to
kids in the state and some kids, most states talked about the policies they have in place or how they ensured that advanced math course were available in middle school either from -- you know they one or a few middle schools may have offered that advanced math course and other kids could take the course there. There's different ways that they could try to describe their process for making sure that kids had and opportunity for advanced math. That maybe something that's a good avenue for us to explore in guidance that would accompany the regulations and Ms. George and Ron you were making the point about we haven't talked about this much. Generally when they are regulations they put out guidance and we try to clarify it doesn't have the same law as a regulation. It generally provides more information about what's in the regulation that we can provide in the
text that's on the page, so that maybe one
way to do it. I think that answers your
question Ms. Briggs. I want to make those
thoughts broadly. I think there's a lot
for us to go back and think about on this
topic.

Ms. Podziba: Let's take a 15-
minute break come back at 11:10 and we
will move to issue 3.

Break.

Mr. Rooney: Thank you. So in
chronological order we would move to issue
three which is the locally selected
nationally recognized high school
assessments however, in light of the
conversation we had yesterday this morning
around accessibility and assessments which
I think will come up a lot in issue paper
three I think it makes sense to jump to
four A and b, and come back to issue paper
three after that if that's okay?
Mr. Hager: My thoughts, I mean there's like five pages of notes that are not organized because I was planning on organizing them during lunch. We can start to talk about four A, but you know it may not be put together as it otherwise would be. I have plenty of thoughts I can make and I am sure other people will as well.

Mr. Rooney: Based on the information we had so far I think there's a lot of comments. I don't expect we will get through it before lunch.

Ms. Podziba: It's okay. I think it's best to get started on four A and assess when it's time for lunch.

Mr. Rooney: There's two pieces there's four A and four B. They are interrelated but different. I want to for now I want to make sure we are talking about the issue paper four A and not four
B. Just to remind you issue paper four A is how we include students with disabilities in the assessment systems and states. Four A is just general policies about how we make sure we are providing for students with disabilities in state assessment systems broadly and by that we mean all students with disabilities. Four B specific components or a subset and those are the students with the most significant cognitive disabilities. The law lays out permission for states to have alternate and we can describe what that is and talk through the issue separately. For now I would like to put -- for cognitive disabilities aside and try to focus the mission on the broad statement of being for all students with disabilities. I am going to ask Martha to start off and some context and history about how states are been assessing
students with disabilities.

Ms. Thurlow: I have been working in this area for a long time. It's hard to condense it into a few bullets. I thought I would identify some of the things we learned in the past 10 to 15 years related to assessments and students with disabilities. So historically you know when I started in this area with there were no there were very few states that had accommodation policies for their assessments. This has changed dramatically now if all states having accommodations policies still that doesn't mean we like fixed all the issued around the accommodations there's traditional practices that sometimes still prevent students from using appropriate accommodations to demonstrate their learning even though the content being assessed is not effected. These are often
things that are going to come out. Things
like combinations that successful adults
use in college and careers to effectively
go around the barriers of their
disabilities to be able to succeed and
function in life such as reading, read a
lot of technologies to text. Another
important point we need to let the IEP
teams know these are teams that know the
student. These teams identify the support
or accommodations that a student needs to
show what he or she knows and is able to
do and what the student needs to be for
instruction and thus for assessment. We
have also come a long way since student
with disabilities who were first required
to be included in straight assessments and
that was before IDEA required it. It was
actually in 1994 IDEA admitted very clear.
Both general assessments and alternate
assessments are more likely to be designed
with all students in mind you start with and assessment development to the implementation of the assessments and the provision of accommodations it doesn't mean it's perfect but we have come a long way. We have a ways to go. Students with disabilities often need accommodation even when the most successful assessment has been developed. We can’t forget that there's always going to be some students who do need accommodations. Universally designed assessments and accommodation policies are more likely to be developed based on the content intended to be assessed rather than preconceptions of what should or should not be allowed and this is a point you will hear again and what is the, what are we exactly intending to measure and that effects lots of other things. Again, the accessibility and accommodations and the intent is to remove
those artificial barriers that prevent students with disabilities from showing what they know and can do. We have looked at documentation or we have looked at data on the percentage of students with disabilities who receive special Ed services using accommodations during the assessment and it's still shows dramatic differences across states. And so you know keeping track of the use of accommodations is around important piece of informing not only policy, but decision making in accommodations. We are going to talk more about alternative assessments. There's a question here I think we should just defer it. Alternate assessments have huge changes I prefer that that question go to four B.

Ms. Podziba: So now I think we wanted to give many a chance to ask questions of Martha if there's anything
they want to clarify in four A.

Ms. Podziba: Any questions for Martha?

Ms. Pompa: Would you speak to some of the recommendations that have been developed by different organizations do they exist and do they improve the access to assessment?

Ms. Thurlow: There's been several organizations have sought to help clarify how to make accessible assessments and universally designed assessments. I think the standards for educational, psychological testing have attempted to clarify what makes good assessments for all students including those with disabilities and those who are English learners. The standards have identified past organization has developed lots of materials around the learning and my center has identified principals for
inclusive assessments so I think those are principles to look at.

Ms. Briggs: You mention that there's a percent of kids and kids that get accommodations dramatically differs across the state let's know the range maybe and you sort of implied some speculation as to why but maybe tell me exactly why?

Ms. Thurlow: Okay one of the last times I looked at these numbers and we can get more recent number it is range was from 8% to a 100%.

Ms. Carr: That's about right.

Ms. Thurlow: There's a lot of factors that come into play there. Some of it is the policy themselves some of them might be the nature of the assessment and how accessible it is, some of it might be decision making about accommodations and concerns about logistics and some
1 other practical things. There's a whole
2 host of things that can go into those
3 kinds of numbers. It doesn't mean that
4 low is necessarily I almost hesitate to
5 say this. It doesn't mean low is
6 necessarily bad? Is it low in terms of
7 right reasons in terms of accessibility.
8 Ms. King: I was just wondering
9 if you could talk about why it's important
10 to provide accommodations so that a
11 student can demonstrate their performance
12 on their grade level assessment versus
13 just giving a student out of grade
14 assessment?
15 Ms. Thurlow: The principle that
16 we want all students to be able to work
17 toward their grade level academic contents
18 standards is really really important if we
19 lose sight of that we lose sight of
20 students moving toward college and career
21 readiness. We do a huge disservice to

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students if we start to give them a lower
grade level and think that represents what
they need to know and be able to do.
Also, it's often misrepresentation and
often we say a student, a sixth grade
student is at the fourth grade level
because of their reading skills when their
thinking skills are not at the fourth
grade level they are at the sixth grade
level. There's a whole host of reasons
why it's critical that we don't lose track
of that enrolled grade level content step
for all students.

Ms. Goss: As we perform as para-
educators and we are working with kids in
the classroom and our small groups and
giving the test. We have seen sometimes
where you have some conflict or some
confusion as to you know does this really
follow ESEA or is it IDEA? Where do you
draw the line in the regulations between
ESSA and IDEA?

Mr. Rooney: Can you clarify that question? What interaction are you looking for between idea and ESSA?

Ms. Goss: So if you have certain accommodations in ESSA or ESEA as far as idea. As far as who can perform them and who can't perform them sometimes in that manner.

Mr. Rooney: So I can start to answer this and maybe Kay can jump in and try to have a better legal interpretation. From an assessment standpoint the Department's expectation has been that states identify the accommodations that can be permitted on the assessment system that do not lead to an invalid result that somehow you are changing the construct of what you are trying to measure. I often use if it's an addition question if you give the student a
calculator it's no longer and addition

question or not. Using a calculator would
change what you are measuring in a way to
make it no longer a valid result of what
that student can do around addition. So
states are required to identify their
accommodation and make sure that
accommodations are not selected by teams
that could lead to an invalid result and
that you know this is about the
accommodations that permitted on the
assessment which should match what
accommodations a student is receiving in
the classroom with their instruction. I
know in practice that doesn't always work.
I don't know if we want to go into that
more? Kay would you add anything to that?

Ms. Rigling: No, I think that's
pretty accurate. I mean we have to be
clear that what we are here today to do is
to work on regulation that implement the
ESSA. I think at the same time we want those regulations to also be regulations that fully includes students with disabilities in accordance with the IDEA. We have to be mindful of both statutes. I think that we are trying as hard as we can to make sure that both IDEA and the ESSA are implemented so that they are not inconsistencies between the two and that IPE teams are recommending accommodations for instruction that are also accommodations that can be used for assessment so that they don't invalidate the score. I don't know that we are completely there yet. I think that's the goal. I think the more accessible the assessments can become the easier it will be for the accommodations that the student uses in the classroom to also be accommodations that they can use on the assessments. So I think it would be
helpful for you to continue to point out to us that areas where that may not be true or areas that we need to clarify because I think we will talk a little bit later about some instructions for IEP teams that the state needs to develop in order to ensure that the assessment that they select for the students and the accommodations are all aligned. I think that it's very very hard to separate out the two statutes even though what we are here today to do is to implement the ESSA not the IDEA.

Ms. James: I think that this question should the regulations, should the regulations define students with disabilities I am wondering if the right people are at the table to answer that question specifically. I think in terms of if everyone here has one this is a question that I intended to get more
information about with some of my one with
my coordinator and additional forms of
resource if you will. What I am wondering
is to ask if regulations should define
students with disabilities if we are or
should even be put in that position. I
just wonder if the right people, I just
wonder if we have the level of expertise
to adequately maybe define what that
means.

Mr. Rooney: I don't think we are
getting into the issue paper yet. I
appreciate your point I am happy to take
that into account once we get into that
issue paper. If there's other general
questions.

Ms. King: I wanted to make the
ESEA and IDEA interaction. Students with
disabilities are general education
students for IDEA provides a certain set
of protections for a certain group for
1 general education students if we are all
2 walking in with that understanding and
3 framework. ESEA is meant to serve all
4 students which includes students with
5 disabilities.
6 Ms. Podziba: Are there any other
7 general questions for Martha?
8 Ms. Pin Ahrens: Can you talk
9 about the subset of students who are
10 disabilities with English language
11 learners after how the accommodations with
12 them maybe covered under IDEA and whether
13 there are differences in the
14 accommodations that are needed for that
15 subset?
16 Ms. Thurlow: So we have growing
17 number of students who are English
18 learners who also have disabilities. This
19 is a group that's been ignored for quite
20 some time I say or if not ignored treated
21 like they were two things one I will treat

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your disability, and then I will treat
your language needs or this is not what it
should be but it's what I heard a lot of
having and IEP or being special Ed trumps
having a language need. I think we are
just beginning to get the word out that
that's a really inappropriate approach for
EL's with disabilities and that they have
both language development needs and they
have disabilities needs and that it's
critical that those be addressed by
collaborative teams so that the IEP team
must have a person on the team not just
could or may but must have a person on the
team who knows language development
processes and needs for those students.
There's been a lot of trying to figure out
what to do and some practices that
probably are not the most appropriate. I
am not sure did I answer all of those
questions.
Ms. Pin Ahrens: Do you know what the percentage of students who are students with disabilities who are also EL's?

Ms. Thurlow: I can look it up.

Again, it varies tremendously across our states right now from about well close to zero percent like .1 to about 24-25-26% of students with disabilities are English learners.

Mr. Hakuta: If I could add to that there are over and under identification issues that interact with the grade level of the students so they tend to be generally I think the trend is they are under identified in elementary and over identified in or at least over represented in the higher grades. Then the other issue I would just raise is and assessment related issue to this overlapping student has to do with
procedures that are in place and we will
get to this later for all English
learners, but that are in place for
identification of English language learner
status as well as reclassification or
exiting status. Some of those interact
with disability issues such as the
requirement to assess students in the four
domains of reading, listening, speaking
and writing which become complicated if
you are hard of hearing et cetera.

Ms. Ricker: I want to ask if you
could just expound on accommodation
through other act if you could give a
couple examples besides IDEA what else are
you thinking of. Help me wrap my head
around it?

Ms. Thurlow: Accommodations are
mentioned in section 504 of the
rehabilitation act and students who
receive accommodations through that act
are on accommodations plans are often
referred to as 504 students. Those are
students with disabilities. IDEA those
are students that receive special
education services and get accommodations
and then as students move up there's ADA
American with disabilities act that
provides for accommodations.
Ms. Ricker: Those are the two.
Ms. Thurlow: ADA is getting
increasingly important as we get toward
the end of school don't forget that.
Mr. Rooney: IDEA and you are
predicting the first question then which
is?
Ms. James: Whether to define and
the statute that use it is phrase and
other acts?
Ms. Jackson: So I apologize if
you have a list already and I'm missing
it. In most of our other discussions I
have a general on what the scope on what
we can comment on and what the scope may
not be. If you can frame this a little
bit for us. I think we are referring to
multiple components and how we might
create regulatory text or non-regulatory
guidelines perhaps in the future to help
frame everything. There's a lot of
overlap and questions that I think also
that may question parts of IDEA. So I am
wondering if you could frame sort of this
does that make sense what I am asking
because I think we could go into a lot of
conversations that may not be appropriate
given the scope of the statute. My other
question is just in this case UDL is
referred to very much even though it says
for all the students it seems to be
labeled and grouped as a special Ed thing.
So I just wanted to touch upon that as we
frame this discussion.

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Ms. Podziba: Aqueelah is that okay you move into the -- do you have a question to ask Martha?
Yes. Is there guidance for accommodations for newcomer EL's?
Ms. Thurlow: That's and excellent question I do not know the answer to that. I don't know?
Mr. Hakuta: Is this newcomer EL's that have been identified for disability?
Ms. James: This is newcomers in general we have not had the opportunity to assess them just yet. In addition to a host of things there is a guidance. specifically for newcomers.
Mr. Rooney: Can we table that question? Five A and B is going to talk about how we include that's a great question and that will give Kenji a little bit of time to think about how he wants to
answer it, so on that note I will jump in. I want to say a few words about four A. This probably answers your question Audrey and please flag me if I didn't do that. NCLB provided that states had to give assessments to all students. States needed to ensure that the reasonable adaptations and accommodations for students with disabilities, students with disabilities is necessary to measure the academic achievement of such students relative to the state content and achievement standards. I was reading from NCLB. It's really important that actually it elevated the importance of including these students in a grade level instruction and assessments, and you know one of the phrases that always stuck with me when we are thinking about what gets measured against what gets taught. We see a lot of advancements in the 15 years.
improving instruction and improving assessment to make sure they are measuring students with disabilities. I agree with some of the comments I made earlier. There's much further and much more the states can do to help support the districts and schools and these kids particularly. There has been a tremendous improvement over the last 15 years on that front. Today for this conversation there are existing regulations which are taken from NCLB and a largely included again in the ESSA that making sure the assessments are accessible and accommodations are provided or accommodations or adaptations determine the statutes for students with disabilities. I think our question is how we make sure that we are creating rules that help support states that maintain accessible to the broadest variety of people and what kind of supports they need
1 to have in place to ensure that happens.
2 We already talked about a bunch of topics
3 that hit on this if a state is using
4 computer based testing or IEP guidance
5 around accommodations. What level of
6 rules are needed in order for states to
7 know how to write reports to districts
8 versus other ways we can provide
9 information through the field through
10 guidance or best practices or things
11 that don't have the same course of law. I
12 think that's part of the conversation we
13 want to have on how we provide rules for
14 states that for then set the expectations
15 for districts and schools and for these
16 students. So there are I think two things
17 that particularly you want to spend time
18 on and based on the conversation so far.
19 The last day and a half there's a bunch of
20 other things that people want to discuss
21 and put on the table and that's why we are
here which is great. The first is to Mary Cathryn's question whether we wanted to combine students with disabilities in the law itself, and this is a change from the previous statute. Students covered under IDEA and other such acts whether it's helpful to provide clarifications. Our current regulations that are in place define that as a student who received who has and under IDEA and also student under 504 plan. The second piece we spent time on universal design for learning and whether it's helpful to clarify that in some way in the regulations we are crafting in order to ensure that universal design for learning is informing everything that's happening. Again, to repeat what Martha said earlier the context per universal design for learning is that you consider the needs of the students on the front end as you are
designing your assessment system. You are thinking about what supports you need to answer the questions you are asking. It reduces the accommodations you need on the back end of the test so it make it is test easier for kids to understand and to show what they know and can do. I think to mar that's point that you know some students will always need accommodations. We understand that. The more you are thinking about the needs of those kids on the front end the less you need to worry about creating accommodations which often times can be not be easy to make sure what's happening in the instruction. With that overview I want to jump into the first question whether we should define students with disabilities in a way to students to receive accommodations under IDEA as well as accommodations through other acts and whether it's helpful to
provide clarification on what that
language means?

Ms. Jackson: This is clarifying
what you just said about -- I don't mean
to be nitpicky. It's not making the test
easier. It's removing barriers based on
their specific diagnosed disabilities.

Mr. Rooney: That's a great
clarification.

Mr. Hager: Specifically to
answer the first question is should you
define students with disabilities in a way
that students receive -- as well as those
are receiving through other acts because
the statute itself this is not used for
accountability in terms of like subgroups
and all of that stuff. This is just for
including my understanding for including
students with disabilities under the
assessment provisions and other acts, and
I think the reason why this statute put in
the phrase other acts is we know there's IDEA and we know there's 504, and the ADA but what if another law comes in down the road we don't want to have to amend the ESSA as well of the regulations because some other act might come in at some point. I think that's why the statute uses that phrase instead of 504 and ADA. I think the regulations can be specific and say you know such as the ADA and 504. In other words I would suggest IDEA, other acts that protect students with disabilities such as the 504 and the ADA and whatever else that could come down the road in the future, but for right now we know it's 504 and ADA. And to clarify Martha's point about the ADA there is going to be a lot of overlap. The section 504 regulations are very specific, very specific regulations dealing with students with disabilities, and the ADA regulations

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are more general about all people with
disabilities but there is regulatory
language that applies to that that can
apply to students with disabilities and
the courts have begun to make distinctions
between the three statutes, but for our
purposes I think terms of access to
accommodations in terms of 504. It's a
group of students. Idea protects a
specific group of students that meet the
idea definition and the 504 slash ADA
group of students are students that do
have a disabilities that are entitled to
legal protections but do not meet the idea
definitions. So I think it's why it's
important that we include both groups in
terms of access to assessments and access
to accommodations. They are already
independent of what the ESSA says. They
are entitled to these accommodations
anyway so that's a way to align ESSA, ESSA
with those other laws.

Mr. Pohlman: This may go to what Audrey is asking earlier but what is the proposed scope of the impact of the change to this bullet. For instance would it then extend the definitions of students with disabilities to a subgroup for purposes of accountability. I don't know but I am wondering about the scope of this regulatory change. It's stemming from the part of the acts that specifically including students with accommodations under acts not the IDEA. I'm not sure that intent would carry it into accountability framework. I am wondering the scope of the proposed regulation here. Can you comment on that so we can narrow our comments to one or the other?

Ms. Rigling: I think you raised a very concern. I think we were recommending confining it just to
assessments, and really to do I think what Ron was suggesting about just having one term that includes all of the students with disabilities that are protected by IDEA and other acts with respect to assessments. You raised a very good point that perhaps the same doesn't carry over into other areas like accountability. I think that's really something that we should take that back and think about. That has to be very clear for our state offices as they move into their promulgation of framework. I think that there may be unintended consequences for purposes of and accommodation and growing the category of a subgroup and I want to explore and discuss differently if we are talking about accommodations. I think from a practical standpoint I experienced a number of occasions probably approaching the hundreds where schools I have been in
will definitely love to offer assessment accommodations for students with 504 plans. I think that also there's a not having the opportunity to offer the same accommodations on assessments for students with 504's and students with IEP's. I have seen at some levels a causes a unique tension within the IEP team of whether or not a student should be transitioned out of having an IEP. I think that we should if there's other protections where a student may uniquely qualify for an IEP but also qualify for protections under 504 in making that decision as and IEP team can oftentimes rest in this area of wealth and how can we provide support for testing or testing in general can be quite Frankly. I encouraged our staff to look at it. I think this would open up and opportunity for us to provide accommodations for students but not and to
make more holistic decisions about students and IEP's. I am being very supportive. I think it's being clarified for not purposes but on accountability.

Ms. Rigling: I think for purposes of this group discussion we should assume that it's just for purposes of accommodations with respect to assessments. I know in the current law we made quite clear in reporting requirements and subgroup account ability it's literally students identified under section 602.3 of the idea. We have made that very clear and so I think we are just for our purposes we should assume that we are really only talking about accommodations because with respect to assessments. We will make sure that whatever the group decides that definition doesn't expand beyond assessments if it's not appropriate to do so.

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Ms. King: Sorry. I just wanted to reinforce a thousand times this point.
I think assume is not, I mean we are talking about the rights provided to children under specific laws assume is not a word I like very much. I would like to be abundantly we are talking about specifically in this section. I would identify in the accountability section it says children with disabilities, but I think the regulatory language needs to be explicit. I am actually Frankly wouldn't define the students with disabilities or the phrase I would define who is eligible for accommodations as those made eligible for accommodations and I hear Ron's pointed about providing and exhaustive list doesn't provide for later laws. I think it is a little bit terrifying in the context that we could be having effect on the rights of children with disabilities
1 for children with disabilities. I think
2 it needs to be abundantly the children
3 should be receiving accommodations
4 providing the accommodations in the things
5 like assessment not at all having any
6 effect both in terms of definition of a
7 subgroup or who has a disability for the
8 purpose of subgroups or who has a
9 disability for other purposes there's
10 other times where we use the language or
11 the word disability when we are talking
12 about different people and different
13 contexts. My preference would not to
14 phrase it as definition of students with
15 disabilities but as students who need
16 accommodations.
17 Ms. Podziba: It seems like a lot
18 of heads are shaking on this.
19 Ms. Goings: A couple of things I
20 wanted to speak too students who need
21 accommodations. With that there is a plan
that needs sometimes -- sometimes it takes
one of my concerns in respect to your
question is that's an IEP that can lead to
that. There's separate. A perfect
eexample if I can give and example where my
nephew was identified as a student with
autism. With that he had an IEP and he
went through high school I believe his
freshman year of high school with an IEP.
I had to turn on a button with my sister
to let her know that it was time to
transition my nephew and so we adjusted
the accommodations of his IEP and we
systematically moved him to a 504 by the
time he was graduated with honors by the
way from high school he was under section
504 now in college just to balance he is
going to become an attorney and how has
with accommodations he is now under ADA.
There's a systematic approach to exiting.
We need to keep that in mind. Then also
when it comes to accommodations just remember and I can't say this enough is that there are systems in place to accommodate children with disabilities. That includes as I said earlier para-professionals and also utilize the services with that IEP team can help in making those accommodations. I sat at IEP meetings where there's, they have a checklist and the team will check what's appropriate that's inappropriate. You need to individualize those accommodations for students. If a child needs a second voice or assistive device then that's what you check and make sure that's what you implement and put it as part of a plan to assist that child during and assessment. If there's an accommodation for a para-professional to assist in assessments in providing support and instructions you write those systems into the IEP as part

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of the accommodations so that those needs
can be met. I can't stress that enough.
I have seen too often where children fail
because there is just a generic plan for
them in terms of accommodation. So
including assessment. I wanted to include
that point.

Mr. Hager: I am probably beating
whatever I want to say here to be very
very very clear about the inclusion of
students other than IDEA students here and
also to meet Tony's and others points
about the statute. The statute
specifically refers to assessment with
students the appropriate accommodations
such as interoperability and ability to
use assistive technology for children with
disability and that's where it goes onto
idea and other acts. This is only for
other purposes. In terms of regulation
you're implementing what's the statutory
authority. You are implementing this statutory authority in this provision. I think we need to be clear because there's so many other places that you don't really want to mix and match. You just want to be really clear in where you are coming from.

Ms. Goings: One more point to make regarding the UDL's. There's systems in place even for that one being response to instruction or intervention which is a general initiative but certainly can include students because we have students with disabilities in gen-ed classrooms there's multi-tier processes that you can use to assist these children so they are ready for instance. One being I know in my district I require all of my SOP's to work in the classroom with teachers to help with response to interventions so that they can do those UDL's and assist
the teacher and also identifies to
students who are struggling. It's an
ideal place to look and say you know a
child who may have been over looked
through RTI that can identify the
struggle. I think it's a good concept and
also a good way and I would like to
propose that we find some way with UDL's
to utilize, assist paraprofessionals in
that process.

Ms. Jackson: Thanks for bearing
with me. I wanted to mention, I
appreciate what Liz brought up about
referring to the general topic being
students with disabilities, but those who
meet criteria for or eligible for
accommodations. There's just a place
where I would like to note 504's are for
all kinds of things as many of you know,
and I am hoping we all agree understand
the difference between IEP or 504. You
can break your arm in a ski accident and
need and accommodation for a brief time.
I would hope the availability, and as
Regina was talking about that having 504's
be directly included also would facilitate
moving children from and IEP and receiving
specialized services to being eligible for
accommodations without feeling like it's
either or. I want to bring up not
federally recognized group of students,
but one's growing in awareness kids
affected by trauma. This is a great
opportunity I know beyond the scope of it
in the statute of this section. Many
children are deeply affected by traumatic
events and need to be given and IEP and
diagnosed or labeled as having and
emotional impairment or a disability as a
result of their experiences that do or can
translate into real neurological or
physiological presentations, but also do
1 not necessarily represent permanent state
2 of disability and there's great factors
3 for resilience. I want to stress that
4 really this including 504 explicitly would
5 allow for students with needs like that to
6 receive supports as needed without being
7 unnecessarily diagnosed as having a
8 disability.

9 Ms. James: Great point I would
10 like to bring up the newcomers again
11 specifically with that little caveat in
12 defining students with disabilities and
13 how newcomers would be identified as that
14 if we define it. So if you are asking us
15 should regulations define students with
16 disabilities I think that there should be
17 some conversation about it. I sincerely
18 echo Liz's statement maybe thinking about
19 accommodations versus the question of
20 should we define students with
21 disabilities so that we are more inclusive
1 of our thinking of all students
2 particularly me advocating for newcomers.
3 How do we ensure newcomers would be a part
4 of this recommendation or explicit out
5 line regarding accommodations for
6 assessments? Does that help?
7 Mr. Rooney: Yes. We will talk
8 about all when we get to five. There's a
9 separate section of the statute that's
10 right after the assessment section that
11 does deal with recently arrived English
12 learners and how they are included in the
13 assessment and accountability system, so
14 that is a piece that's already captured.
15 I think question you are asking is more
16 about the accommodation for those kids and
17 how we are making sure that's explicitly
18 part of the state system. I think we want
19 to table that for issue five.
20 May I give additional clarity?
21 Some of the students that are newcomers
experience significant trauma and so that
directly aligns to how do you incorporate
trauma with 504 and or IEP so that is
specific to a disabilities?

Mr. Rooney: Thanks for that
clarification that helps a lot. Are we
ready for question two? How should the
department generally ensure that states
promote meaningful access to the general
curriculum and assessments for all
students with disabilities including the
use of accommodations and principals of
UDL's which is universal design for
learning? Just to point you back up top
to the middle of the page. The ESSA
actually in the back of the ESSA where
they have a definition for a lot of terms
they did define UDL and they referenced
the higher education act which is a
different act that I am not that familiar
with. It incorporated that definition
here for our purposes for the ESSA so we
wanted to put that on the page in front of
you just doing the gymnastics to get where
that definition shows up in the higher
education act is a little bit difficult.
We wanted to have that in front of you for
that knowledge. I think the question is
what should the regulations do to ensure
they are meaningful access for curriculum
assessments. Try to separate IDEA and
ESSA this is about the assessments and
what are the regulations or what should we
say about making sure students have equal
access in our assessment regulations?
Mr. Evers: This may be too
simple of an answer but I will give it a
shot. I think this is an area that's not
compliance related, frankly. I think it's
a perfect opportunity for us to invite
schools and state and local districts to
do this better. It's more of a quality of
implementation in which I think does not connect to regulations. In turn you know we already have regulations around what peer reviewers do or don't do. I think this particular issue could be expressed in current guidance and by expanding it to include UDL and under the section called critical elements for policies for including all of the students and assessment and that could be aligned or changed to reflect this question. I just don't believe this is a regulatory thing. I think this is something that we could all pull together on. The federal government, state and local government's through a peer review process.

Mr. Hager: Picking up on Tony's point definitely regulation needs to say that you know that they have to consider universal design for learning. We definitely have to say we have to consider
it. I like what you are saying there is
the guidance for the peer reviews.
There's guidance for the state plans.
There's a lot of different places and I
think the Department should look at all of
those terms of implementing the UDL
principles. Any place that would be
appropriate to consider you looking at did
they, did the state or did the district or
does the assessment fill in the blank, the
state plans or local school district every
place you need to be put in UDL making
sure that all the places where someone is
reviewing the requirements for approval
under the ESSA that UDL is being
considered. I think that would go a long
way to effectuating that without being
overly prescriptive at the and regulations
themselves that would make sure that it's
implemented and I may have some other
comments. I think that at a minimum we
Mr. Ruelas: I agree with what both of you are saying. You know how should the ED generally ensure that states promote meaningful access to the general curriculum itself. You know they should definitely provide guidelines or policies suggestions for states under UDL integration. More importantly we should also make sure that we provide professional development for the educators themselves in regards to this issue. Educators cannot be expected to implement the principles of UDL correctly without support or professional learning opportunities, so I think that's very important.

Ms. King: Sort of to Tony's point I would kind of like to take credit for the work we are going to do and remind everybody when we have regulation that
provides for accommodations, and when we have regulation that ensures students with disabilities or included in the general assessment that has the effect of increasing access to the general curriculum. So I think it may be there's good preamble language to talk about that being why these things are so important. I don't know if it requires additional regulation. I think you know just reminding all of us that the role of accommodations for example is to level the playing field so that we have value and reliable measurements. When we are including students with disabilities in the general assessment what we are doing is helping to ensure we are including them in the general curriculum and instruction. To that one let's take credit for something we had already planned to do.

Ms. James: Yes, so I wanted to
know does if you could Kay speak to section 300.160 B in idea that speaks specifically to assessments? No? So there's a reason to be helpful to understand what that means in relation to this particular question.

Ms. Rigling: We will have to get back to you on that. One thing I did want to do is just refer you to the statutory language about UDL. Basically the lead in is that each -- I'm on page 27 I might be working from a different number document.

It's the very top it's the one handed out yesterday it's the one in there missing.

So the lead in is that such state assessment systems shall and then the requirement is you developed to the extent practicable using the principles of the universal design per learning. I wanted to make you aware that's the statutory
1 language so the fact that it says to the
2 extent practicable is I think to Tony's
3 point gives some degree of flexibility to
4 a state in designing assessment system but
5 that the point is that in developing the
6 assessment system to the extent
7 practicable it should be based on
8 universal design for learning and there's
9 a definition in the ESSA for universal
10 design for learning, but what it does is
11 it cross references the higher education
12 act. So one of our questions is would it
13 be helpful in order for states to
14 implement that provision of the statute
15 for the regs to include the definition of
16 universal design for learning from the LEA
17 so that it's all there in one place?
18 Mr. Hager: Yes. It's always
19 good in regulations to not have people
20 flipping from 75 pages all in different
21 statutes and all of that stuff. It's a
good thing you can do in a regulation. I did have my thing up already for another comment if you don't mind? Was she ahead of me?

Ms. Podziba: I think Richard wanted to respond to that if I am correct?

Mr. Pohlman: I may be in disagreement. I think this has a potential for being very impactful guidance looking at the peer review process and other elements of how the Department -- states to implement the act. I am concerned that through regulation we are going to create requirements that may or may not have unintended consequences to the level of specificity. If you question is narrowly defined to whether or not we need to better define universal design for learning in a regulation I think that can be one area for exploration. I think this question gets to how can through the
regulatory process we ensure that the states promote meaningful access to general, I think when you get into ensuring the way that a state is doing those you can become overly prescriptive in regulation and to have unintended consequences would be over regulation. I don't want to be sensitive to that as we move on with the conversations.

Mr. Hager: My thing was about including the definition in the regulation. I did say about in terms of the general concept. I think there is something that could be in the regulations regarding UDL which would be you know that the state would have assurances of how they have incorporated principles of UDL. It's not, it's not Leslie saying exactly but making sure that in a state plan they have identified how they are considering this that it is, you know not exactly what
the rules are about it but they have considered it and in the documenting.

This was yours you had yesterday this Mic here. The other thing I wanted to point out again and I think this is not for regulation but probably in the guidance or preamble there's some very I think helpful language that is in the committee report for this provision that you know describes some of the general principles involved and also talks about the professional development as part of the intent here and a comment that you had made Martha about that it's not intended to minimize the need or use of assistive technology that good universal design will hopefully reduce the need by not eliminate the need.

Some of that report language again having everything in one place. A lot of people don't look at the report language it might be helpful to give broader guidance about
what we are talking about when we talk
about universal design.

Ms. Podziba: I think we are
ready to go to question three.

Mr. Hager: There's two parts to
that question. One is the UDL and the
other is other assessment and
accommodation. We didn't talk about the
other accommodations. I think that's the
biggest part for me.

Ms. Podziba: I supposed you have
a comment on that?

Mr. Hager: I eluded to this so I
am going to fill it based on the order you
were talking earlier in the day and it
also some of these questions were asked
for the question about the locally
selected national whatever it's called.

So first of all looking at computer based
assessments whatever type a computer based
assessment it is. What are some of the
specific concerns about its assuring access for students with disabilities to those assessments, and one is there have been instances where the developer are blocking accessibility features because of security concerns? This is a significant problem. Let me start with the beginning. In terms of test development when these tests were developed if the test was developed by under a federal grant section 508 requires that what's called electronic and information technology be compliant with section 508. It applies specifically to the federal government not to others like 504 does. When the Department is issuing contracts or grants to develop computer based tests, a computer based test is electronic and information based technology. They should be required that the Department should be requiring of the test developers that they comply with 508
1 and clearly the blocking accessibilities
2 feature z because -- basically what 508
3 does you have section 50 IV which provides
4 general anti-discrimination protections
5 508 goes into what does it really look
6 like? What does an accessible website
7 look like what does and accessible they go
8 into computers and all sorts of details
9 criteria. In my mind one of the ways that
10 you can ensure compliance with 504 is if
11 you comply with 508, so that's there's a
12 legal basis for what I am saying and
13 trying to tell you and going forward. I
14 don't know exactly how we do this? We
15 want to make sure that these problems with
16 students with disabilities are
17 encountering don't continue, so we don't
18 want the tail to wave the dog. We don't
19 the security to limit. Everyone agrees
20 this student needs this accommodation to
21 demonstrate their knowledge because we
can't use it because of test security.

Another thing that would be the implementation of computer based assessments is you have for some of these protocols tough 504 team or the IEP team developing recommendations for accommodations but then there's a person at the test sight if you will that is kind of taking a second look at this. The intent was that they some accommodations that are built into these tests apply to other people besides students with disabilities. You can turn features on and turn features off and what's happening is whoever that person is vetoing the decisions of 504 or IEP team, it should not have that authority. They should only be here's the 504 IEP team accommodations, and then if there's additional things or ways to implement it that's okay because I can't veto what's developed by the IEP.
team. Now, new requirements of this
interoperability like I said that really
should have been already there, but the
best way to think of interoperability is
to think of plug and play. It's really
designed for plug and play. It's and
equity issue and fairness issue that when
you look at some of the assistive
technology that people are using. You
have people that have very limited
mobility. They may be using a puffer
straw to access their computer. They may
be using eye gates to access their
computer. If there's no developing use of
brain scans and brain waves to access the
computer. Plug and play would say
whatever it is that I am using to access
the computer I have to be able to access
whatever these assessments are you know
with however they have been developed
without having to -- we talked earlier
about having to relearn the test protocol.

This is whole other issue which is just accessing it at all. If you don't have that interoperability you cannot access it. The other concept of interoperability, which we talked about a little bit, is we talked about putting it in one place using the same ATE they are using every day. You are not being tested on the test platform you are being tested on what you know. The idea of interoperability includes this physical connection if you will but the idea of using the ATE that the students are using every day. Maybe I have three categories so maybe let me stop there and maybe have feedback from the rest of the group before I move on. I am open to whatever people prefer?

Ms. Podziba: Just go through all of them.
Mr. Hager: I am on a roll.

That's the issues with any type of computer based assessment. Then we move onto nationally selected assessment which is the topic that we have been skipping over but there was questions about this I think it's good to put it in one place which is a decision made about going to 4 A. The IEP team or the 504 team that have driven the accommodations not the SAT people or ACT people or whoever it is.

Second, when students with disabilities are applying for the ACT or the SAT they often have to fight with the test developer, the people that administer the test to get those accommodations they have to go through appeal processes all sorts of things. If it's being used for accountability purposes not as opposed to just let them. They have been sued many times. In terms of if we are going
1 to use it for accountability purposes to
2 implement the ESSA those families should
3 not be having to fight the ACT and SAT
4 people. It should be built in. They
5 should not have to be fighting that fight.
6 It's kind of connects to the 504 IEP team
7 should be making these determinations.
8 The other thing is if there is and
9 accommodation that's given that's and
10 approved accommodations by the 504 team
11 the SAT or ACT or whoever it is those are
12 the two players now should not be flagging
13 the score or otherwise limiting the
14 purposes for which that score can be
15 given. They are taking it. They have
16 taken it so it should be able to use it
17 and not because that's another problem
18 with the ACT, SAT's they can no longer
19 flag it. They would literally have a red
20 flag on this score that goes out to the
21 colleges that this was not whatever.
There should be no limitations given on that kind of assessment. The full range of accommodations need to be available including Braille and other kinds of things so students that may have more significant needs. Now, the third this is a specific problems for the computer based, specific problems for the national selected now for more general issues. The best way to phrase this is as Mr. Payment's phrase is it parsimony? Whatever it is. Parsimonious? -- I never took Latin or whatever it is. That concept that you referred to is a critical issue for students with disabilities and accommodations. It's something that Martha eluded to as well. When a test is developed what is the test measuring? Because IDEA prohibits IEP team from the selecting and accommodation that quote unquote invalidates the test okay. What
1 is the test actually measuring and our
desire is to see the test develop, design
and administer in such a way that you
minimize the times that that happens? So
for example if I am doing a eighth grade
reading test am I really at eighth grade
measuring decoding or and I measuring the
ability what does it mean to understand
the text? What does it really mean to
understand the text? Well, what we want
to say is when what does it mean to
understand the reading passage it means
understand if that's what you are really
measuring. For all of these types of
tests and as you move specifically for
ESSA the requirements are four, eight and
high school, right? 3-8 right? When you
are moving forward in your progression
what are you measuring at each grade
level? What is our general content
standard requirement and developing and

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1 analysis that would minimize the impact of
2 invalidating the test. Certainly when you
3 get to high school are we ever really
4 assessing the ability to decode a test or
5 basic arithmetic skills? Is that what we
6 really want to be demonstrating at the
7 high school level or are we looking at
8 higher order skills, so I hope I am being
9 clear here? The more and this is also I
10 think a little bit of a universal design
11 for learning type of approach as well.
12 The more we carefully, even if we are
13 looking at a third way what we do want to
14 assess their reading decoding ability
15 let's just assess the reading decoding
16 ability where you don't get your read
17 allowed accommodation. Let's look at how
18 do they interpret and applies text which
19 an important skill without having to worry
20 about whether you are measuring their
21 ability to read without a read allowed or
you are measuring the ability to understand the text so that's really the most important point for general accessibility.

Ms. Podziba: Thank you.

Ms. Jackson: Now I forgotten everything I was going to say Ron.

Mr. Hager: Sorry.

Ms. Jackson: I am going to try to remember. I want to be really clear I am not against accommodations in anyway but in a state I think I talked I am not and expert on state plans in anyway. Theoretically there's state plans that get approved and in those as appropriate with the state with regard to current progress toward understanding and embracing UDL at all levels not just all of a sudden tomorrow we are writing a report and saying we do UDL. I think it would be important to note that and we can fine
tune or decide if this is appropriate
later, but how states are making sure that
they are instructional delivery and
hopefuly standards aligned IEP's are
ensuring that students are not receiving
accommodations that somehow make it so
that the district or the school does not
have to provide intense instruction where
the child needs it most. For example I
have had children with severe dyslexia in
my classroom. As much as I know I am not
able to be three people at the same time
and give them adequate rules based reading
or and appropriate interpretation for that
child based on their individual
neurological presentation and profile. I
could have a child with adaptive resources
in my room and say well this child can
have the test read to them and there are
plenty intelligence and there for can
perform fine. It would be in general to

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let the child stay with that accommodation
as almost a scapegoat to providing and
intervention that child needs to read
independently. I am naming this in
general but not to be really prescriptive.
I think these two things providing more
broad inclusive frame—working for children
to receive appropriate accommodations
coupled with increasing UDL should have
some focus on the balance between while
you were providing appropriate you must
also prove that you are providing adequate
and thorough interventions as appropriate
to address the child situation.

Ms. Podziba: Anything else on
the second question I think it's time for
lunch. I am getting that sense in the
room. Even though there's a third
question why don't we take and hour for
lunch and come back and start with the
third question on issue four A. Let's

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reconvene at 1: 35.

Lunch break.

Ms. Podziba: Thank you where we left off. I want to announce that there's a public sign in sheet just on the table to my right. If anyone in the audience wants to address the public it's on my right. Did I do that again? You know what I meant. (laughter) Patrick, I will turn it back to you to help to conclude with 4 A.

Mr. Rooney: I think Martha made an introduction. A nice suggestion of tabling the third question under four A and adding it to the list of questions in four B. Unless anyone has and objection to that I would like to propose that we do that so I will make sure we discuss it within the context of four B since it is very much related to that topic. Okay.

Seeing no objections thank you everyone.
We are going to move onto issue paper four B. I do want to highlight that there were supplemental materials that we want to reference as we are talking about this topic. One is your back packet behind issue paper four B. There's two others that are actually behind issue paper four A that are relevant for issue paper four B sorry they are in this later on spot. Just plug that as we start off. This is alternate assessment based on alternate academic achievement answers. I think we could start with Martha providing a short overview in history.

Martha: Now, okay I would do the same thing again I want to give you a few bullets and base it a little bit on what we learned since IDEA first required alternate assessments in 1997 so that was first required in 1997. So these assessments based on alternate
achievements for students with significant
cognitive disabilities. These assessments
have changed dramatically since they were
first required in 1997 or to be
implemented by 2000 and we have now have
alternate assessments that are computer
based with most of the students with
significant cognitive disabilities
interacting in some way with computer
based assessment either directly or
through the technology. Students who
appropriately take the alternate
assessment based on alternate achievement
standards are capable of learning great
base content. If they are provided good
instruction based on high and reasonable
expectations for their learning with good
instruction with appropriate assessments
and accommodations. We have seen
tremendous academic outcomes for these
students. They have different achievement
1 standards it doesn't mean they are the
2 same grade level based achievement as
3 other students. Rigorously defined
4 students are meeting these standards and
5 showing that they can learn as expected.
6 We have also learned that the alternate
7 achievement standards can be rigorous even
8 though they are different from the
9 achievement standards. These standards
10 can be aligned I am using that word
11 knowing that they can be tweaked it can be
12 aligned with the academic content that
13 promotes the expectation with the students
14 with the cognitive disabilities are
15 included in their enrolled grade
16 curriculum, so it's one of those intended
17 consequences that we will get them into
18 their the same curriculum as their peers.
19 So they are learning the same things as
20 their peers may be not to the same breadth
21 or depth as their peers. I can give you
examples if that would be helpful. States over the past several years have really been refining their participation criteria so they more clearly define which students should appropriately participate in the alternate assessment. We know that when too many kids are included in the alternate assessment based on alternate achievement standards there's a concern that we have students inappropriately taking that assessment and maybe students with learning disabilities and other health impairments and we can't tell exactly by category and you can raise questions when you see students with certain characteristics by participate anything and alternate assessment designed for students with significant cognitive disabilities. Let's see we have seen that strong if you got the strong criteria for participation and you have got continued
1 professional development and guidance
2 materials you can ensure that the
3 appropriate students do participate in the
4 alternate assessment and that they are
5 those students with the most significant
6 cognitive disabilities. When we have this
7 discussion the only other thing I want to
8 say is it's really important to keep
9 separating that enrolled grade and content
10 standards. What that means from the
11 alternate achievement standards, so
12 alternate achievement standards versus
13 grade level standards so making that
14 distinction is really clear the content is
15 about what we want students to learn and
16 we have to do and the achievement
17 standards about how well how much do we
18 want this to learn and be able to do it.
19 I guess the last thing I will say is about
20 the alignment procedures because that the
21 assessments have changed so dramatically

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1 over time. Some of you may remember we
2 have a lot of portfolios in the beginning.
3 We now have more computer based item based
4 test. The alignment procedures for these
5 assessments also have improved
6 dramatically over the past few years.
7 Particularly with recognition that the
8 alignment just isn't a check at the end
9 it's something you do throughout the
10 development process. It's kind of that
11 universal design. You are aligning
12 everything throughout the process and
13 having really strong standard setting
14 process that's documented and validated
15 and that reflected professional judgment
16 about the highest learning standards for
17 these students with that I will end.
18 Ms. Podziba: Questions for
19 Martha?
20 Ms. George: I have a couple of
21 questions. The first is their demographic
information available current demographic
information about and I do see the chart
with the state break down but do you have
by race or ethnicity or demographic
information in those states that went over
the one percent?

Mr. Rooney: I am not sure we
have that data we can look to see if we
can get that data.

Ms. George: Okay.

Each of the two alternate
consortia have attempted to gather
information on the students who are
participating in the alternate assessments
for one they captured the inventory or the
other is called first context survey. I
don't know the data off the top of my
head. My recollection is that there were
nothing seemed out of place in terms of
representation by different ethnic groups
et cetera. I could find that data.
Ms. George: I think I need additional clarification between the enrolled and the alternate achievement standards. The alternate achievement standards are how much we want the students to be able to do, how much to learn and in the content standards is that more about proficiency? Can you clarify?

Mr. Rooney: This may be a better question for us to clarify. The requirement and I will talk about this a little bit more before we get into the issue paper. All states have and alternate assessment and in regulations in 2002 the Department allowed states to have alternate tests with alternate achievement standards. What was in regulations into statute which gives definition for states to develop alternate achievement standards with the group of students with the most significant cognitive abilities. What are
the highest standards that this group of
students can attain for that grade and
then those become the alternate standards
that you put those kids to, and you assess
them and based on that assessment based on
whether that met that proficient alternate
and based on that it can be reported back
to participants and teachers.

Ms. George: The alternate
assessments are informed by previous data
or information regarding alternate
achievement standards.

Mr. Rooney: So in order to the
general process states use when they
establish their assessments for general
assessments and alternate assessments is
they develop their assessments and they
administer the students, and they get the
data back from the first administration,
and they bring together people in the
state who have a broad range of diverse
backgrounds and content expertise within
look at that data and help identify what
is the appropriate achievement standards?
The set in this case the ultimate
achievement standard that's set for the
alternate achievement standard.
Mr. Hager: I just want to make
sure I got it right? It's hard to grasp
it maybe I am trying to do it more
graphically I guess. We have a fifth
grade content standard then the alternate
achievement standard should be based on
that fifth grade content standard but it's
going to be what is the highest level of
expectation for what could they learn at
that fifth grade level so it's not going
to be the same as the fifth grade level
but it's going to be based on the fifth
grade level general content is that?
Ms. Thurlow: Generally, yes it's
a hard concept. Okay. I think there's a
great paper that came out of one of the consortium called standards that are the same but different. It really defines what the content standard is and what would an alternate achievement standard look like? It gives concrete examples which I can't easily do off the top of my head, but I can read the things they have. This really looked at how do you set a high expectation so the achievements standard is about the expectation for the student and you can set expectations that are high, lower, very low, and so what we are talking about is what is that expectation? What is that alternate achievement standard appropriate for this group of students still linked or aligned to that grade level content. You don't want to lose track of that content. The students may interact with their peers.

Mr. Hager: So really the goal is
1. I think you did elude to this I want to make sure in terms of including students with significant disabilities in a grade level class like inclusion class this would be a way to align the contents to make it easier for that student to be included in a regular grade level class is that the intent?

2. Well, I do think that's part of the intent and even if these students are and I don't, well even if the student is in a separate class as they go through school they will have the content so that they can talk to peers out when they finish their K 12 system. Its ideally there would be their same grade peers all through school.

3. Mr. Hager: So really the goal maybe and older view would be if you are a student with significant disability you are going to learn this first and you
don't go onto the next thing until you learn that now we are not using that model as the student is aging chronologically the expectations for each class are going to go up like the other students would do?

Ms. Thurlow: Yes. I would say this is a group of students who have particularly suffered from a desire to get them to learn all the very basic skills first and never being ready to get into the grade level which is critical.

Ms. Podziba: Are there any other questions from Martha? Patrick, I think we are ready to go into the issue paper.

Mr. Rooney: Okay. I think we talked a little bit about all the assessments I want to give you some of the broad context and overview in order to fully engage in the issue paper. We know some of the history. I mention add second ago that a little bit is a mix between
IDEA and the ESEA that idea requires states to have an alternate assessment for their assessments. Under the regulations for NCLB the Department permitted states to develop and alternate assessment based on alternate achievement standards with the students for the most significant disabilities. A lot of what's in -- there's some differences that we can spend time on during the sessions to try to flush out. Based on the available research student’s with disabilities make up about ten percent of all students in the schools that vary slightly from state to state but that's the general census it's about ten percent of students with the most significant cognizant disabilities. I think Tony's question might have been that you know the Department has not defined the most significant cognitive disabilities but
states have operationalized definition of what constitutes the most significant cognitive disabilities generally speaking and it's about ten percent of students with disabilities, so that would be about one percent of all tested kids would fit into this category, students with the most significant cognitive disabilities. So generally speaking this is alternate assessments based on alternate achievement standards for the purpose of this discussion just refer it to alternate assessments and it avoids acronyms. Just know when I say alternate assessments that we mean the test for one percent of the population possibly that is based on alternate statements. A little more context that's helpful when we establish the rules for the alternate assessments we put a cap on there's no cap on how many kids can take the test, but there was a
cap on how many kids could score proficient on the alternate assessment and be included in the states accountability system. If more than one percent of kids passed the alternate assessment the state would have to re-designated some kids not proficient for the purposes of accountability because the cap was at one percent of all tested kids could pass the alternate assessment. Do you have a question Audrey? I want to make sure you understand that.

Ms. Jackson: I may have been fluctuating my full attention so please tell me. You are talking about previously how one percent worked. Not my interpretation. My interpretation at the most you could count one percent of kids tested proficient towards your proficient status what I thought you heard if it's over one percent tested proficient they
1. would have to be reclassified as not
2. proficient which sounds wrong?
3. For the purposes of
4. accountability systems they couldn't
5. exceed one percent. If a state were to
6. exceed one percent of kids had pass it had
7. alternate assessment they would re-
8. designated some of these kids non-
9. proficient. In terms of information that
10. goes back to parents they would get the
11. score on how their student performed. The
12. Department was not very prescriptive on
13. how that was done because stated couldn't
14. exceed one percent. If they did they had
15. to have a process by which they got under
16. that one percent cap?
17. Ms. Jackson: They were deemed
18. non-proficient but they were simply not
19. included?
20. Mr. Rooney: They had to be non-
21. proficient.
Ms. Jackson: Am I wrong Martha?

Ms. King: I think you are saying the same thing in different ways. For the individual child who was proficient would get a score of proficient back to the home, et cetera, and this is state level right? For state level and accountability if you had more than one percent you could only count one percent.

Mr. Rooney: State and district level. Neither states or district could exceed one percent. The theory was to be sure they were being properly assessed to make sure they were not being put into it inappropriately. They put the cap at one percent. Under the ESSA there's a significant change in that there is a cap now of the percentage of kids at the state level who can take an alternate assessment so the cap is now at the state level the cap is one percent of all tested students
can take an alternate assessment. There is no cap -- it's explicitly said in the statute there's no cap at the district level and there may be reasons for that. One of our questions is to get at that question. There's now a cap on how many kids can take the alternate assessment. There's a couple of things in your binder of additional pieces in your binder. I mentioned already that there were two pages from there should be four A that were appropriate for four B. There's also another one that shows participation alternate assessments based on the alternate standards. Janel said with her question, the 13-14 school year is the last date the percentage of kids who took an alternate assessment. We want to get that background information as information reference for you just thinking about this discussion. Some states were under one
percent of kids assessed on all three assessments some states were over one percent including some states were up to -- in 2013-2014.

Ms. Rigling: Can I point out don't assume those states were out of compliance because as Patrick said, the cap, the one percent cap was on the number of proficient scores that could be included in accountability. There was no cap on the number of students who could take the assessment. This is just sort of helpful background information because now the cap is on at the state level and the number of students who can take the assessment, so obviously the states that are assessing more students than one percent are going to have to have procedures that probably redefine or provide more monitoring of who's being identified for this assessment in order to
not proceed the one percent cap on participation. The other thing is there's a footnote in 13 or 14 there's several states implementing something the rights committed called modify. Those are no longer permitted and so it's we don't know in 14 or 15 for example if some of those students were pushed into the one percent alternate assessment or whether there's students like they should have been were assessed with the general assessment, so is this sort of a, the information we are providing is meant to be background information, but and not necessarily an indication of what states were doing in 14-15-15-16 and what we will be doing in 16-17.

Ms. Podziba. I see name tents going up. Does it make sense to work your way through the issue paper do you want to take clarifying questions first.
Mr. Rooney: I might want to go through one or two more points. I want to make sure I layout as much as I can. We can take questions and go to questions and issues. Even though the law says states may not assess more than one percent of the students with disabilities. The law is explicit in the section of the statute actually that states may request a waiver of this requirement, and if we in our public comment period and in our conversations with the public have heard a lot that this could use clarification in terms of what would be required the state were to ask for a waiver of the statewide cap and how many kids can take and alternate assessment. How we balance the need to make sure kids are getting the appropriate assessment with any concerns that kids would be inappropriately assessed on alternate assessment which we
will have implications for students in
their sometimes alternate assessments
aren't forgetting a regular diploma they
may have other indications that have not
because the federal purpose is to have
them just for state and local reasons and
how it's added into the system. I think
that's enough for us to get started. I
think that was partly where the question
came from. I think we can take the
questions before we start into the
questions for discussion.

Ms. Podziba: Committee
clarifying questions Thomas you are up.

Mr. Ahart: Out of curiosity
knowing the circumstances of my district
has there been a persistent issue of those
folks exceeding the one percent or folks
altering to -- the one percent?

Mr. Rooney: Prior to ESSA
passing states and districts could assess
more than one percent in alternate assessment. The most recent data we have in how many kids are taking alternate assessment. If it exceeded one percent then the compliance issue or put the state or district out of compliance with law. Under ESSA there's still no requirement that a district assess fewer than one percent. The cap is at the state level not district. The district level exceeding one percent is in compliance of the law.

Mr. Ahart: What we are trying to solve here that we feel there's too many students being assessed inappropriately?

Mr. Rooney: We want to make sure all students are being assessed appropriately. I don't know if the Department can say they are inappropriately being assessed. I think that's a student-by-student basis. I
think our best data is that student’s with
the most significant cognizant
disabilities is about one percent of the
population. We would assume balancing out
the states one percent would be the right
amount of kids taking that. There's
probably more in some areas but that's
just speaking.

Mr. Ahart: Thanks.

Ms. King: I wanted to get some
of the history. The intent has been that
one percent was sort of a high ceiling
right? It was never meant to be a goal
and so like to Thomas point the objective
here is not that there would need to be
enforcement right if everyone is being
appropriately assess that had the
expectation is everyone is appropriately
assessed then that would come under one
percent of all students giving the
alternate assessment wasn't that the
foundation for the one-percent in the reg?

Ms. Rigling: I think that the figures that we had at the time indicated that there was about .5% of students with the most significant cognitive disabilities, to Liz's point the one percent we felt was generous.

Ms. King: Generous is a little bit of a unnerving word I would say larger is a better adjective that one percent was higher than what we would expect because right the goal here is not about punishing anybody it's only ever about making sure children are receiving assessment that's appropriate given the situation they are in.

Ms. Rigling: Again, under the old reg the limitations wasn't on the number of student who is could be assessed which is why you see in the chart a number of states exceeding the one percent. That
wasn't our restriction on them provided
like Liz says that their IEPT's were
identifying the appropriate students.

Mr. Wilbanks: For the sake of
saying why we are here. I am wondering if
we are not exceeding to be the rule making
process here this one percent is pretty
much accurately stated one percent is one
percent. However, it does say that
there's no limit to those and whatever
that number is whether it's .01 or 3% is
determined by IDEA there's some very
strict rules in the regulations there. I
just want to throw the question out there
is there something that we as a committee
can do. I personally think it may exceed
what the rule making process is. I will
leave that for discussion.

Ms. Pompa: This gets close to
your first question but I don't know if I
heard you mention it? It's a point of
information what is, how do the, how is significantly cognitive -- pardon me?
Most significant cognitive disabilities defined currently? If it's defined in a way other than through the federal government what's the level of variation in that definition?
Mr. Rooney: I would like to respond to that if that's okay. If there's no clarifying of that that segways into the first question if that's okay?
The first question is should the regulations define students with the most cognitive disabilities? It is not defined in the ESSA and its not been defined by the Department previously. We identified that student, that states needed to define that term themselves or who's eligible for the alternate assessment but we left discretion to the state to determine that. I will say and this is that I want to
point us to the two documents that were, the supplemental information in your binder and the tab for four A. I mentioned that the outset that I think are relevant to this particular topic Delia there's two consortium of states that are designing new alternate assessments. Their definition last year in 2014-15 in 29 states in the first two dynamic learning maps, and the second is national center and state collaborative. They over the past four years were defining new alternate assessments for the students with the most significant cognitive disabilities. Because they were working together to design the assessments they worked together what are eligibility criteria. As they were designing what the assessment should look like they were looking at the same group of kids. It made sense for them operationally to do.
that. On these two pages we shared the participation guidelines that dynamic learning maps and the national center collaborative and NCSC came up with. If you look they are very similar they worked together across the two consortia to design common criteria how a state, district IPT team to go through with a student should take and alternate assessment or not. They are good starting points or discussion points to consider if you are thinking about the regulation or Department should in some way define the most significant cognitive disabilities that the helpful to the field to write that clarity. That's the question I have for you is whether that's appropriate. At that point I would love to hear the committees thoughts.

Technical difficulties. Missed 4 comments. (Leslie, Audrey, Tony, Lisa)
Ms. King: -- I just we see this as a core civil rights issue and a disability rights issues that about including all of our children and including our children with disabilities I think to your point I am so glad in your district this is not a problem. The challenge that we have is that we do know there are places with children with disabilities is being excluded this cap is to prevent that.

Mr. Hager: In response to Tony I also would agree with Liz. There's disagreement within our disability community. That we would prefer there's a federal definition and we do have these basically consistent provisions that are being used and a number of states that are helpful and kind of really I don't want to use it. They are helpful in what does this word mean what does the most significant cognitive disability mean? We
do think that these do provide a good working definition. However, short of a full federal definition we definitely want what it isn't and we want to very clearly delineated we want to give guidance to the states. It's not just about federal heavy handedness. It's helping to make sure that the states have information they need to help make good decisions our goal would be a definition, but an alternative would be looking at these exclusionary criteria in building that into a definition. We are not going to tell you exactly what it is and we will say what it isn't. It's based on each of those words most significant cognitive disability. These exclusions are really trying to say how do we make that real by this is what it shouldn't be so that's my thought.

Ms. Briggs: Reading through the statute I am trying to wrestle with how
1 this is different from the original
2 writing having to spend a little bit of
3 time with that. I am going to echo Liz's
4 sentiments on the importance of the cap
5 and using those scores for accountability
6 purposes. I am less convinced that
7 definition to be included in the
8 regulation I feel like this is such a
9 student by student IEP team decision is
10 encourage bid this guidance. This is
11 fantastic information by these two
12 consortia. Even in March that was
13 explaining how much this has moved since
14 2002. I am thinking about how this work
15 will unfold over the next few years is the
16 introduction of the cats and how those
17 assessments are going to be assessing the
18 kids not only above grade level, but below
19 grade level my assumption is that maybe
20 one reason why the modified assessment was
21 taken out because these cats can grab kids

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at lower grade levels than where they are enrolled. So it almost is like to see how are these things going to play out before we start adding in you know definitions that are hard to work around or to adapt to a particular child. That's kind of how I was thinking about this.

Mr. Wilbanks: You had requested at the beginning if we had serious concerns about an issue. We need to notify you early on, and I am doing so now. I just don't believe that this is something that we need to write a definition for. It's already in IDEA. It's very clear and I know the definition and unless we just like IDEA it would be confusing both with its state SEA and the local so that's my thought.

Ms. Podziba: Thanks for flagging that.

Mr. Rooney: I did want to -- it
is not defined IDEA that term is not defined in federal law. The question is whether we should define it here in ESSA. I want to make sure that term isn't defined here.

Mr. Wilbanks: And I agree in that should tell us something too because they are guidelines and procedures and process, due process that people can follow.

Ms. Podziba: Thank you.

Mr. Cheeks: I think in an effort to reach some point of consensus for this particular group this is about title one part A. Someone mentioned it earlier it may have that I'm not sure if this body has the inner working for the IDEA world to each make the recommendation to have codified definition or not. With that being said I think also probably can send a clear message that there is a need for
1 greater guidance and greater information
to be shared with states around this
2 particular definition. It also appears
3 that some states have I thought I heard
4 someone mention earlier that some states
5 are already defining this term another
6 factor that we may want to consider is
7 with a definition even though we may not
8 have the capacity to generate the
definition we will possibly put ourselves
9 in a position of automatically causing
10 states not to meet the already statutory
11 requirement of the one percent. So that's
12 another factor that may need to be
13 considered in terms of the conversation
14 about having or not necessarily having a
15 definition. I think the IEP itself the
16 factors that are tied into the IEP would
17 accommodate some of the factors that were
18 raised particularly from
19 the -- components. It would engage the

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parent so they would know the rational or
to the background behind that particular child
being designated in that criteria or not.
I think we should keep our lens around
title one part A and its ability to
augment and support in addition to the
IDEA world.

Ms. Podziba: I am going to take
four more comments on this question and I
think we will move to the next one.

Janel?

Ms. George: I hear the concerns
and share the concerns especially Kerri's
point about this is really a student-by-
student determination. I am wondering
just based on the research and the data
conducted by both DLM and NCSC which
layout their criteria in the supplemental
material and which 28 states and the
District of Columbia, Alvin including your
state of Mississippi are following.
Currently if that's your guide would the
definition could be understanding that all
states are not following that? But I am
wondering if some of the variation we saw
earlier above one percent is probably
attributable to the fact that we have so
many varying definitions. It's providing
not only clarity through regulation but
also through guidance in addition non-
technical assistance to states can help
implement this change.

Ms. Goings: States clearly have
a developed a system or process for
identifying students with disabilities
that is included in that IEP process.
That process when they go through and they
hold the IEP meeting it's during that time
and it's based on a preponderance of
information provided by the school
psychologist and the speech pathologist
and patient interview and teacher
interviews there's a preponderance of information that help guide them to identifying whether the child is significantly cognitively impaired that's not the word I wanted to use. If you go through that process and it's called the eligibility process once that's done and the students identify then services can then ensue based on students' needs whether it's significant cognitively adult delay or minimally. Know that process is already in place and it's placed at the state level, and they help guide school districts in identifying students with disabilities. There is a prone I believe a three prong if the child eligible and if I can't think of the other prongs I will get it. There's three prongs to identify students with disabilities. You need to rely on your state if your state does not have and eligibility criteria shame on
them. Because that's what that process is for.

Ms. Pompa: One of the beauties of the ESSA is that it was built on the strong parts of NCLB and hopefully the part that is weak or problematic limiting. This work by the two consortia builds on something that was set up. We talk often throughout the day today and yesterday about how important it is to provide technical assistance to see what arises from the field. This is a great example of something that has arisen from the field and you have consensus among almost 30 states. It would be ashamed to let that research and experience go out the window. When we talk about a definition perhaps we shouldn't be so hung up on the definition of definitions. I think we can have a definition that was a framework more than a specific word for
word here's how exactly you do it that
would build on what we have learned
through work of the two consortia and from
the experience of those 30 states and have
some guidance or regulation that would
layout that material that would be
appropriate?

Ms. Pin Ahrens: I am very
concerned about the last of definitions
and that there's variation at the state
level. I appreciate that state haves a
process. It means that there's tremendous
variation in the services and
accommodations that are given to students
and their families. I wonder because we
have this protocol in place where we can
form a subcommittee to look into the issue
and I don't know if it's appropriate to
suggest that maybe we form a subcommittee
to look at the current state level
definitions to find out what the best
practices for the accommodations that are
given to students and families who are
identified. I would also like to you know
ask the subcommittee if they can look into
the demographics of the students that are
identified to see if there are issues with
certain definitions of misidentifying or
over identifying certain demographics.
Also, I would like to know the information
sharing practices with the family in terms
of after their children have been
identified what kind of information is
shared with them as to the you know what
impacts their child will have as a result
of taking these altering definitions.
Ms. Podziba: I thought you were
suggesting that you wanted to create a
subcommittee but I heard you saying that
you would ask a subcommittee certain
things I don't know if you are hoping
other people the committee will create of
themselves a subcommittee or if you are
volunteering to create that subcommittee?
I don't think I'm the best expert
for this so it would be someone else.
Ms. Podziba: If there's people
that want to consider that we will see if
people come forward. I did say last three
comments on this question. I don't want
to shut the conversation down. I will
take those comments but I want to be aware
that we want to move through the issue, so
Tony you are up.
Mr. Evers: I will speak quickly
first of all I have a question and is
including a definition explicitly called
for in the statute that's always one of
the things I ask. I am asking it again.
Second of all I am very concerned that a
category definition in this category or any
categories frankly I would be in direct
conflict with IDEA and our long time
connection that the IEP team is a place
where decisions are made that's a concern
of mine. Apparently, if we want to put
together criteria apparently we believe
that IEP teams aren't necessarily doing
their job which is a different thing, the
other thing and people have brought it up
caps are in place. This deals squarely in
states prerogative. There's no one
percent on local district there's one
percent on state. Clearly states are
going to have to figure out methodologies
and systems to ensure compliance here. So
we have adding the federal definition to
this I think will make that possibility
each more complex.

Mr. Ahart: I want to make sure
that I echo what Tony just said. There
are requirements already in both under
IDEA for the state and or district to have
established guidelines for this process as
Regina referred to it it's a three-prong test. It feels like IDEA is the best place to address this level of specificity. It feels like a definition is outside the scope of what we were asking for ESSA.

Ms. King: Yeah a couple of things toward speaking to this intersection of the ESSA and IDEA. The way IDEA works is identifying children eligible for special education service which is a different process which this is narrow to the scope of assessment and accountability provision. What we are trying to identify is who are the purposes of assessment as required under federal law and which then lead into state accountability systems design consistent with federal law. What is the appropriate way in which to assess children? So I think that I am not sure I totally
understand that IDEA conflict concern
right this language around most
significant cognitive disability is
specific to this moment because the
specific function of this law work very
differently than the way IDEA works. I am
not at all worried that there would be
having a definition here would be
inconsistent with IDEA, and it wouldn't
interfere with the way a child is
classified for IDEA services or anything
like that. The other thing I want to say
is IDEA doesn't sort of just sort of give
anybody free will to go forth and come up
with a category of children with a
disability and then provide them some kind
of services right like there is definitely
discretion needed within the IEP team
that's fully appropriate. There's also
strong federal guidelines in IDEA as well
as regulation to guide IEP teams what the
appropriate things are in identifying children eligible for different services.

To the earlier point I agree with everybody that there is we could come up with a very bad definition that's certainly possible. If we had a definition that for example made reference to individual disability categories as identified in idea that would be a bad definition. If we had a definition that wasn't based on the pervasive nature of a disability that it you know it included students based on only one domain or things like that. We could come up with a bad definition which is bad children and bad for schools and bad for everyone, so I think there's a way to come up with you know and maybe a definition is not the word we should be using. Maybe criteria is a better word perimeters or guidelines or something like that within the reg's so
that we can continue to make what is a very clear statutory cap of one percent of all children continue to make that meaningful in a way that you know is helpful in a way that is ensuring some consistency in identification for the alternate assessment. That was my recommendation on that is that you know yeah I wonder is definition is where we are getting tripped up is the use of the word definition.

Ms. Podziba: I have a hunch that Patrick and the Department have enough input in this Department. I think you will have a chance to persuade each other in various ways when this issue comes back up. Patrick, can you take us to the next question?

Mr. Rooney: You are correct on that assumption. (laughter). The second question: How is state able to ensure that
it does not assess more than one percent of children with and alternate assessment that's not able to limit the number of students at the district or school level? I think we can anticipate there's many reasons districts may need to go over one percent that multiple districts send kids from one district that is the kind of receiving school for kids with the most significant cognitive disabilities or if the school is located near a rehab hospital if there's other things that we need to have more than one percent. That's why there is not a cap at the district level. Presume by that would cap out at one percent. This question is how will ensure that it does not assess more than one percent when it can't, it cannot limit that percentage at the district level and kind of in a pragmatic practical terms you know whether our regulation
should do anything to help support or
guide states to trying to figure out how
to implement this new cap within the ESSA.

Mr. Hager: I will jump in. The
first thing is the way you have the
question phrased in terms is not able to
limit its a little bit narrower than that
when you look at the statutory term. You
want to make sure that you are using the
actual term you know the provision for the
prohibition on the local cap it says that
neither the secretary or a state so either
the Education Department or state
education can oppose on an LEA a cap on
the percentage, so it would allow for
targets or ranges. It can't be an
absolute cap. So what are the ways in
which a state could help ensure you know
it's basically going to be a monitoring
the state is going to have some kind of
monitoring process of what's going on in
the school districts for its purposes so that if you got one district over here that's higher or one over here that maybe lower they have to be keeping an eye on where the school districts across the state are, and where there might be a school that's going over they need to have some process of reacting to that or getting information from the school district why are you? Are you where you are at? Are you using the wrong criteria or are you do you have the exception that Patrick said, where you have a hospital or some other thing there that you have more incidents across the state. The state could have some guidelines about where they may look at a school district. Is if you are in this range we will look at you why you are in this range which is different than having and absolute gap. And so first of all is there can be
targets or ranges that a state could use
is they are looking at what's happening
across their state they definitely need to
have some kind of monitoring process and
some kind of I will use an intervention in
a general way first of all finding out why
they are there, and if there needs to be
some support to this school to ensure
compliance with this provision. The
school, the state has the cap but the
school districts are required to provide
only this eligibility, only students that
qualify are supposed to be in this
category. Even the school district
doesn't have a cap they do have criteria
they have to follow to who they provide it
to. The third thing is creating and
promoting a culture of best practices and
why are we worried about that and ensuring
that the school districts have the
resources to fully provide the services
that students with disabilities need so
that only the students that really do fit
into this category are in the category.

Mr. Rooney: I think it would be
helpful to follow some of your comments if
you look on the statute under tab B after
this on page 28 of the statute that last
paragraph is the prohibition on the local
cap. If you wanted to look at the
language that would be exactly where the
prohibition is in the statute.

Mr. Evers: I will argue again
for this question for not regulating.
There's nothing -- for using the
accountability to incentivize one percent.
There's nothing in the statute that would
prevent us as states to have districts
that anticipate exceeding the one percent
to consult with us and hopefully in a
collaborative way to look to reduce that.

There's nothing to prevent us from those

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that exceed the cap to subsequent to that
to having a plan in place requiring a plan
in place to reduce it. There's all sorts
of things states can do and will do
obviously because we are the ones that are
responsible for making this happen. So I
don't think there's really a way to craft
regulations that would identify all the
different things that we could do and
every possible change that or individual
child situation it just means regulate to
me. I would encourage the lack of the
word regulation here.

Ms. Jackson: I was going to say
that I think in some ways how the state is
responsible for justifying anything over
requesting waivers to explain why they
would go over one percent in a similar way
that LEA's can be required to justify to
ESEA's as we said for specialized program
and high prevalence in many ways that
would facilitate the sharing of
information on any issues that ESEA would
want to be informed and get involved more
formally. That justification mirroring
between LEA and SEA could be useful
without being specific or descriptive.

Ms. Ricker: Thank you. I am
trying to be mindful with a lot of things
in wrestling with this question, so
ultimately the state has to have the cap
and so where does the accountability then
go besides obviously besides the state?
What is the sanction or incentive, what is
the -- you know there is a state that ends
up assigning a ratio or something and
feels that's their way of getting around
to assigning a cap to a district? I think
of essentially where does the
accountability get driven. My question is
how can we be mindful that we aren't
putting unintended pressure on teachers in
IEP teams and there is and there's and
honorable pressure right that teachers in
IEP teams not only feel themselves to
their students or school communities, et
cetera. And unintended pressure that
would end up having negative consequences
is like that what I am trying to wrestle
with right now with what feels like a very
incongruent note. This idea that there is
a cap at the state and yet you know so the
state is responsible for what districts
are deciding to do. Districts end up
putting pressure on teachers and IEP
teams. I can hear the calls right now. I
am trying to be mindful of how you do this
with some integrity without that
unintended negative pressure at the
decision point that we might all say is
actually the most impactful and the most
important.

Mr. Pohlman: I just want to echo
that I think it's very important that to be viewed through the lens of collaborating with LEA's and I think this is hits on the theme from a couple of comments. Schools have lived through with their states and implementation of the caps already. I think a number of schools through that process realized that they had some work to do, the state realized they had work to do. These were highly localized issues and the issues that Washington DC experienced for different than those in New Hampshire or Texas or California. I think that for that reason I am having a hard time conceptualizing of a federal regulations that are specific enough to be warranted and yet doesn't infringe on or not even infringe or truncate states abilities to work collaboratively with their LEA's that solve those problems in that instance, you
know as charters we are often times given
that flexibility to innovate from the
space of having more accountability. I
think that those accountability metrics
are something that we are going to get to
that third question. I think that
interplay is certainly there and necessary
as I have read them of a way to make sure
that when a state is applying for a waiver
or that as districts that see that one
percent cap that there would be
accountability. That really needs to
transpire between the state and LEA and
not between the federal and the federal
rule of that relationship.

Ms. King: Thanks. I have a
couple of different things I wanted to
flag. I think it's important here to
remember that this is one area and I don't
know if this is sort of to my earlier
point about taking credit for the things
we were going to do anyway where this
access to accommodations piece comes in.
We wanted want to be in a situation where
what's happening students are being over
included in the alternative assessment
they do not have accommodations they need
on the general assessment. As well as
universal design for learning is another
way that children are meaningful able to
access the general assessment. Also, to
refer that the Department is given other
guidance on standards based IEP's as
another way you know and just what I keep
thinking about with all of this is the
goal here I really do promise we in the
civil rights community do like to sigh a
lot of you that is true. Our goal is
children be well served at the first
place. If we all have to come back and do
enforcement actions what that means is a
child is not well served. Our goal is to
come up with a system that will ensure the
greatest likelihood that children getting
what they receive. Technical assistance
Tony this one is on you. The states are
going to be providing technical
assistance. Partnership is a great way to
do that. We want technical assistance to
ensure that children are getting the -- in
the classroom. We do think there should
be rules for when people are not going the
right thing and not getting better. The
transparency around this is going to be
really important. States are going to
need to be transparency about when
districts are exceeding the one percent
cap, and what the justification is being
provided the public has access to that
justification I will agree maybe a totally
valid justification. If it's not the
public is going to need to know that a
district most likely not serving it's
1 children with disabilities well. I think
2 the transparency is going to be really
3 important as well as sort of generally
4 throughout the regulations making sure
5 this is a meaningful cap. I do think
6 where ever we can direct states to provide
7 the support to districts and to provide
8 support to schools and classroom teaches
9 so we can get to the actual goal of all
10 children being served.

Mr. Ahart: I would like to note
11 that we have the ESEA's already have to
12 work with LEA'S and we have to plan who is
13 appropriate to be served with an
14 alternative assessment. It seems this
15 would be another exercise in redundancy to
16 expand. I am not saying it works
17 perfectly certainly. I will also say I
18 speak for all my district colleagues that
19 we share the same goal.

Mr. Hager: I think if both
Richard and Thomas you have to be able to come up at the federal level to come up with a system that allows for flexibility at the state level. I think there should be or can be some federal guidelines for the states that how the perimeters in which they provide guidance what are the flags they should consider. Whatever I said earlier and I think there should be federal guidance but definitely the federal guidance needs to allow for state flexible the statistics that we got from that one tab. Even though there's no state way over the one percent a significant number of the states more than half the states are over. There's a need and it's partly because they didn't have to do it. The states are going to be and the districts are going to be moving 38 states for the reading and 37 in math. They are going to have to be moving down
to that one percent and so you know the
Department I think has some expertise
should be giving some guides on how can we
get there. Not that you can say you have
to do this or you can only do this. These
are things that you have to consider as
you are moving to get into the compliance
with that requirement.

Ms. Podziba: Just for
clarification sake when you say guidance
do you mean not regulatory?
I meant in the regulations
provide guidance through regulations.

Ms. Podziba: You are talking
about regulation because guidance is a
different set of things.

Ms. Briggs: I just thought I
would point out that a number of people
have raised questions about things that I
actually think are in the statute in the
way this issue paper is presented without
having the -- we are not seeing some of
the protections information that's
required so there's you know a whole
clause on ensuring parents of students are
informed and what that means for how they
are being assessed, and what it means for
their high school diploma? And requiring
the state plan to incorporate EDL and so a
lot of these things sort of in statute
already that we are not seeing in this
issue paper because of the way it's
presented. I just want to point out there
is a lot here actually. I mean like way
more on this one percent reg than other
things that you know would think would be
more text on.

Ms. Briggs: Are you suggesting
that even in the part where in the
Department just repeats the statute that
many of the issues people are raising may
be accounted for?
Yes, like the prohibition on the local cap is sort of what a state can do if that doesn't work and all of those things there's a lot here about in the statute that can be repeated.

Ms. Podziba: If it's all right everyone --

Mr. Pohlman: I am curious if there's a response to or how it can be addressed that there's a negative here as rules tighten and states are forced to work with districts, we as districts can often times feel prohibited from assigning and alternative assessment or making that decision when it is in the best interest of the student. I think so there's this flip side where I hear a concern coming out of districts who may be over using the assessment, but we also have districts that are you know like my own who are made up of entirely urban areas where the
1 percentage of students with disabilities
2 is higher in that the percent of students
3 with significant cognitive disabilities
4 some data also suggests they are higher
5 and how we address that with schools and
6 IEP teams. I am back in the space of
7 collaboration that as we move to more
8 restrictive regulations that can cost us
9 in schools I realize it's tough from some
10 seats you can't assume the best actors are
11 in the seat, and we assume the best actors
12 in the seat, too. There's a negative
13 impact when you assume the worst actors in
14 the seat as well. If we were to go down
15 the line of regulations need to
16 accommodate for both of those because I as
17 a school administrator would never want to
18 make a bad actor decision, but I may be
19 forced to do so if there's pressure from
20 the state or an artificial cap put on me
21 as a district from my state level. I want
to put that into the conversation as a point of consideration.

Ms. Pompa: Maybe this is stating the obvious but it doesn't say anything here about the federal government requiring a description of how states will do this in the plan which to me you could put together with what Kerri said was already in statute referring to and Kerri I haven't seen it. If you say there's language that describes what states should do if they are going over the one percent cap. If there could be a connection asking for a description for that in the state plan or how the state is responding that might be one way to take care of it.

Ms. Goss: We talk a lot about the one percent cap as far as being you know protecting the student. I think that we also have to recognize that it's an IEP decision and that we have to put the
student first. Sometimes I have seen where if we have this cap and this cap is daunting on a district or state then people tend to make a decision that isn't in the student's best interest and they're forced to take the non-alternate test and so they are set up to fail from the very get go. I think we have to be careful both ways.

Mr. Evers: The last time I said these conditions that are not explicitly called for in the statute are these regulations that people are suggesting are they explicitly called statutes because that's why we are here.

Ms. Podziba: Okay. Patrick, I think we can go to the next question.

Mr. Rooney: Question three: Are there instances in which the state could justify testing more than one percent of student with and alternate assessment. If
you look at the statute let's see if I can read to it you quickly. It is on page 29 of the statute where at the very top. Roman number four on top of page 29. It calls out the waiver program, they shall be subject to the waiver program. Identifying that the waiver exists for states, exist if there's this one percent cap that they can request a waiver of the cap. The question then is are there instances in which a state could justify more than one percent of students with an assessment? -- when deciding whether to grant a waiver of the one percent state level cap?

Ms. Jackson: So this level is definitely above my expertise, but I am curious if there's any possibility or what the precedent is if for to have sort of a panel of experts either civil rights or people who are advocates for students with
disabilities to assist with reviewing
waivers. I am just thinking. I don't
know I am curious is all.

Ms. Briggs: A couple thoughts on
this so you have data that show you have
more states using this than one percent
now. They didn't have to have the
justification for it that's all I am
trying to get at. So you know you are
going to be faced with this. I would
think one thing that I keep coming back to
is what is the assessment system as a
whole design to capture and whether or not
a state has a cat and whether or not a
state has locally selected tests coming
into play and how are those things come to
mesh together and might effect this issue
of a cap of one percent?

Mr. Hager: I am trying to let
other people start, but I will thank Kerri
for starting out. We definitely think the
waiver should not be freely granted.
There should be the expectation that they will be meeting the one percent at the state level meeting the one percent cap.
The procedure ties into the other question. How can a state ensure that the school districts are not exceeding because if you have a bunch of school districts exceeding your state is going to exceed. The first piece is to make looking to grant a waiver the state needs to document the efforts that it took to provide support and services to the school districts to you know get you know get within the one percent, A. B is there a reason why the incidents this is across the whole state exceeds one percent. For example you have a school district that may have a hospital or something where students go and there's a lot of students with more significant or most significant
disabilities than normal that
statistically would expect. Now for the
state to justify going over there.
What circumstances in the state would justify going over the one percent. If off small state population wise we would like to the Mayo Clinic which could end up having a lot of people. I am going to Mayo back and forth. My parents said we are going to move to Minnesota or the Cleveland clinic if there’s that much of an impact at the state level to justify exceeding the cap. The other kind of documentation is that the state is compliant otherwise compliant with the IDEA in ESSA requirements in terms of the SPP, the APR and SPP that the state can document the training that the school districts have had in this kind of what the requirements are with the criteria are, and yet those criteria are being
appropriately considered then also whether
they are disproportionally for students of
color is another factor to consider yet in
granting the waiver. I am listing some
potential factors that could be
considered. At the basic principal is it
should not be freely grant that had the
state should have a high bar to justify
why it is as a whole state they exceeded
the state. When the state exceeded when
it presents to the Department to get a
waiver.

Mr. Ahart: I would suggest that
the state has followed the expressed
requirements for part of the assessment
under ESSA and has implemented and
monitored the IDEA requirements that can
be documented then a waiver should be
granted. I don't think there would be any
further regulations needed.

Ms. James: I think we heard it
before but I would like to say it as well. I think that we have really pay close
attention to the member of our IEP team. When we are asking what should -- take
into consideration when deciding to grant a waiver of the 1.0% cap it makes me
wonder how we value the IEP's team input? If we believe that the people that have
made recommendations are doing it correct? It just makes me wonder where's the value
in our IEP team if you know, if we are asking Ed to take into consideration if
there is a case in which a state exceeded 1% it just makes me wonder where our value
is with regard to our IEP team.

Ms. George: Just to add to that I definitely think we should value the IEP
team, and the part of the way we can do that is providing IEP team with supports
and services and any technical services they might need. We have to get back to
evaluating the children who are subject to these alternate assessments and look at the consequences the very real consequences of taking alternate assessments. These are certainly necessary at the students disability is so pervasive. Do we have to recognize a very narrow purpose of these assessments and the reality that taking these means it often means a student doesn't lead up to a regular high school diploma? What does that mean for that child in terms of access whether it's employment or higher education? We have to recognize again that the purpose is a very limited purpose and the consequences for students are very real and as much as we want to applaud and support all the great actors we still have some very pervasive disparities particularly along racial lines and particularly for African-American males.
that we do have to recognize that we have
to look at our nations history and racial
discrimination and desegregation has
been -- it's not to say everyone is doing
it or every thing is happening but the
disparities are real these assessments
have very limited purposes. We have a
small cap to recognize that very limited
purpose and there’s some real consequences
for students who do these ultimate
assessments.

Ms. Mack: Just to address the
question. What are some instances that
could justify, certainly population has to
do those if you deal with small states in
a one percent in a small state can be a
very minimal number. That justifies some
of that or if you have a state like
Montana that boasts more cattle than
humans or something like that you know
those kinds of factors can effect and
1 justify that.
2 Mr. Ruelas: Time for a break.
3 (laughter).
4 Ms. Podziba: We are close to a
5 break so you know.
6 Mr. Ruelas: You know it's really
7 great to hear the reason the justification
8 for actually having a cap, and you know
9 this is a really tricky situation because
10 of the fact that I get it. Personally
11 when we talk about the whole issue of why
12 we even have the whole IEP process itself.
13 I think we should definitely make sure we
14 respect that. I do understand the reason
15 why we need to proceed with caution as
16 such. It's really. It is a really tough
17 situation the purpose of the whole IEP
18 process itself is to determine you know
19 which assessments and accommodations
20 students need appropriately. To just kind
21 of echo my colleague Lynn here we don't
want to fall in that situation where we are you know placing the students in unnecessary or inappropriate assessments just because of this one percent cap itself, so that's kind of what I have been thinking the entire time of listening to everything and the reasons for not having the cap versus the reasons for having the cap and stuff this is really this is tough.

Ms. Podziba: I am going to take three more comments and then we will take a break. Ms. Ricker?

Ms. Ricker: Thank you. So yes there's instances I believe where a state could justify this I think we have seen because we have had states get waivers granted that is true and suggestions for what to take into consideration at first very practically something that the Department of Ed already does, and it's
going to continue to do to take into consideration catastrophic events that occur and foremost on my mind is the sort of special needs are children in flint Michigan are going to need for the next however many years and decades. Again, I think the Department of Education is already on that and you would continue to do that but that pops into my head. I do think the quality of the main or alternative assessments impacting each other so greatly is also something too keep in mind because as you know as the rich discussion we just had about high quality computer adaptive tests illustrates that with better access to accommodations we may reduce the pressure on alternative assessments and so I so I would say as a suggestion in when you would consider a waiver is asking or just saying that we should take into
consideration access to these sort of next
generation exams specifically to our
special needs community if you are asking
them to address that in a waiver what sort
of access specifically did a special needs
community have to increase the
accommodations and increase the
appropriate accommodations and things. I
think it's something that’s entirely
appropriate.

Mr. Pohlman: Sure I think the
answer to the first question is yes. I
believe there are instances where this
state can justify succeeding the one
percent cap. What I think they should do
is a few things the first is that if value
weight based upon local license and yet
data driven requirements these are not
politically motivated by any sense. They
are rooted in data preferably years long
data and not just a single instance of a
1 single year cap. The second that waivers
2 be time bound to further and incentivize
3 state to work well with their local
4 municipalities on that cap not that
5 multiple waivers of time bound instances
6 are not given. There's opportunities to
7 reevaluate the data periodically. In the
8 third piece which I think is important for
9 a number of constituencies is that the
10 data supporting the waiver be transparent.
11 This is important not just for those who
12 are at the table who may use the data for
13 as was so gently mentioned before lawsuits
14 but also for authorizers and they use this
15 did that to inform their decisions how
16 they look at authorizing schools and look
17 at authorizing more schools. I would again
18 stress that this is a big area for where
19 charter schools are serving a lot of
20 students that are most diverse and most at
21 risk students and this many of us have
missions aligned to that. I would encourage that to the extent practicable that the Department think about how can we encourage partnership with state authorizers and the conversations about this to the extent it's practicable.

Ms. King: One overarchining point I want to make I think we all have and interest in a predictable waiver process. I think we would all want a process that anybody can look at and say I understand why that waiver is grant add state could reasonably expect that they could get the waiver you know that everybody that's predictability and granting waivers I think is really helpful when the Department is granting waivers. What other possible criteria I wanted to add. The overarchining point I want to make is a reminder to everybody this one percent number is explicitly higher than we
believe the incidence to be. There's a
distinction of the sort of children who
would be identified as being the most
significantly cognitively having the most
significant cognitive disability would be
different than thinking about special
education categories which do vary widely
from state to state which due more likely
to other factors than children. A couple
other things whether there's been a change
in the percent of the state population,
sort of thinking about other state
dynamics that would result in the need for
a waiver if there were a change in people
with the most significant cognitive
disabilities maybe that would be take into
consideration. I think also having a
clear definition of eligible children of
the most significant, children with the
most significant cognitive disabilities
would be helpful here is that really is a
thorough guidance and I think there's a reasonable defense that if request you are consistently following that definition I think you are exceeding the one percent cap than if there's not a clear definition to begin with. The racial disproportionately the over representation of categories of students of color with disabilities in the alternate assessment I think would be a flag and sort of get to a larger point here which Aqueelha raised with overall compliance with IDEA if the state is exceeding the one percent cap that may flag broader noncompliance I know that's a need for additional technical assistance by the Department to me that I wonder if that is an indication that children are broadly not being well served. Children with disabilities are not being well served broadly. I think that because you know there really is just
not when if we were being really strict
and thorough there is not and expectation
that a state would ever exceed a one percent cap. I think we want to be very
careful if that happens. We need to look
a lot more within the practice within that
state that the children are getting access
to the services and supports they need.

Ms. Podziba: Why don't we take a
15-minute break and let's return at 3:40.
I just want to remind the public that
there is a sign in sheet for those who
want to address the committee at the end
of the day. Thank you.

Ms. Podziba: As soon as you are
ready.

Mr. Rooney: I think we heard a
lot of thought on this to remaining two
questions and to answer, Rita, I think
your question is there is a bunch in the
statute. That last question that talks
about the IEP guidelines that regulate the statutory language about what the IEP guidelines need to include I think may help as a starting point may help us think about how to I think corporate that into regulations. Between those two things I think we have enough to go on. I want to make sure there wasn't anything else people wanted to say about this last question on the page here about actions that states should take to ensure all students are properly included in the assessment system and safeguards and also the other question which you remember is from the previous paper around how the regulation should address alignment of alternate achievement standards and content standards. I want to give people that haven't been said before we move onto issue paper three.

Ms. Goings: I had a -- when I
1 couldn’t think of the three prongs. I
2 found them in terms of eligibility. One,
3 there needs to be a disability based on
4 the assessments and then the needs to be
5 an adverse impact on education, and then
6 thirdly there needs to be there is a need
7 for a specialized instruction especially
8 specialized design instruction.
9 Ms. Jackson: I will try to keep
10 it brief. I loved teaching math and I
11 work with fifth grade math, but I may be
12 over simplifying things. It matters what
13 the whole is that you are considering.
14 State variations in your percentage levels
15 of things receiving alternative
16 assessments vary greatly in what we have
17 seen and clearly that's unnecessary
18 referrals that do a disservice to
19 children. I also keep coming back to the
20 basic principle of a percentage and what
21 the whole is and when states have this
may be pretty equitable across states. The number of students in non-publicly funded schools or who attend private schools without assistance affects what the whole and total number of schools are in school age in that state. The one percent is out of the whole subtracted from those that have been removed through private schools does that make sense? For example if Massachusetts I am making this up totally has a hundred thousand kids and entirely private schools and a few of them receive public fund dollars then we are finding one percent of students out of minus those one thousand where if Nevada has two thousand kids that go to private school the one percent is calculated out of those attending public school for me in my fifth grade focus math brain. I want to know what are the variations so I would be curious if there's any major variations
across states in the percentage of student who is are not included in the whole reference for reliability and accuracy of one percent does that make sense? Okay.

Mr. Rooney: I think fraction court will be after. (laughter)

Ms. King: To make sure all students are being included would be the flag the requirement that 95% of all students be assessed that's the history of that requirement is about making sure that students with disabilities especially were included in the assessment as well as English student and just flagging that maybe this if you have in a reference to it in the reg or something but yeah just that.

Mr. Hager: Related to the last question from 4 A there is already a fair amount of guidance out there on this the NCSC brief and the 2003 guidance from the
federal, from the Department of Education. You don't necessarily have to re-regulate that but to use that or to you know refer to that or reference that as helpful information. There's a lot of history of this. Let's not forget what we already know as we move forward.

Ms. Pin Ahrens: I think the intent of the transparency for ensuring that kids are being properly included is to do a demographic break down by the categories that states already have to re-point by in their report card so that we make sure there's not certain demographics that are being overly identified.

Ms. Podziba: Okay thank you.

Patrick with that I think we can move to issue three.

Mr. Rooney: Let's going backwards in our binder, which I imagine will have lots of comments on hopefully.
So this is the new requirement in ESEA or new aspect of the ESSA that commits states to allow districts to use a locally selected nationally recognized high school assessment in place of the states high school assessment. I think we should start by thinking about a state assessments in the context of what's often happening in states and what's happening in when students are going through which is a large part of where this came from. The NCLB and now ESSA that require they have an assessment in reading math and science. In each grades one through three and at one point in high school and does not define when that should be administered in high school. I think operationally many states have selected grade 11 as the test it's a very common grade that the statewide assessment has administered. As you all know many 11th
graders are also taking their college admission test at that point. A lot of students are enrolled in AP courses and they have AP tests at the same time and there's a lot of exams that come around the same time in the school year for this same group of kids. So I think that's partly where this new aspect of the E SSA is coming from. So the law requires states to establish technical criteria by which you review and nationally recognized assessment if they decide to allow districts to take this option and if you look on the issue paper the middle paragraph the first page lays out those criteria. The state needs to review that the nationally recognized test aligns after measure it is breath and -- state standards it needs to measure all the content the student has been taught. Equivalent to the state test difficulty
and quality and these are all pulling language from the statute which means that the nationally recognized test was significantly harder or easier in the state tests some states will be setting different expectations which is why this isn't about the content coverage difficulty and quality that nationally recognized provides comparable and reliable data that it meets the same level as the statewide system that is unbiased differentiation on the accountability system. Since the results will be used in the accountability determinations and you know again kind of trying to separate this is ability making sure the state system has guide high quality tests that can provide data in the accountability system not that we want to then spend time talking about what's in the states accountability system it's critical by the
test provide transparent clear information
to help states and districts evaluate
their progress. The statute does not
define what it means to be a nationally
recognized test. I think one of the
questions we have for our discussion today
is whether it's useful to define that in
regulations. I will point out that along
with the bill that was reported out of the
education committee and Congress as when
they reported out they report out of
report without the bill and in that report
language around the ESSA they specifically
mention it had SAT test they were thinking
would be what they would constitute a
nationally recognized high school
assessment. It doesn't intend Congress
when they were drafting the bill? The
statute requires districts choosing a
state approves nationally recognized must
notify parents. We are spending time to
make sure community perspectives are heard
an understanding of instructional impacts
of the change from the state test to the
continuously recognized assessment and they
are well communicated to those that are
mostly affected by this change. As a
final point I think it's helpful to remind
you the key aspect of the assessments in
requirement that the requirement that each
state -- all students are held the same
high standards and that the state is
developing assessments that are aligned to
those standards, so sorry that's slightly
more easily more clear in a way. Each
state has to identify what they expect
kids the to learn then they design their
assessment and then measure their
standards. This provides the common set
of expectations it's common measure that's
used across all schools and districts in
the states so that way they can compare

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students and get an understanding of what
students are doing, and they can use that
in the accountability of how schools and
districts are making it. It helps provide
transparency and equity of information
which then can help inform things that are
decisions that are being made at the local
and state level. At the state was using
it at different test then the national
recognized assessment that's being used in
district B students in district A may be
held to different standards or may be hard
to compare across those two different
tests and the lack of comparable data may
cause some -- the state and district are
trying to figure out what resources and
support schools need. With that overview
I would like to jump into the questions if
possible. We have got six questions laid
out here and the first one is what does it
mean for and assessment team to be
nationally recognized?

Ms. Jackson: I have a clarifying question first. The local assessment would be more of a supplemental assessment or an SAT or ACT more predictive.

Mr. Rooney: Can you repeat?

Ms. Jackson: A local assessment is summative and the one referred to as examples ACT and SAT for example are predictive assessments, so I am just clarifying if that's actually accurate and two then if they are proper examples for the criteria listed in paragraph two?

Mr. Rooney: I don't know that the Department wants to answer that question. I would say that the state assessment is a summative assessment.

It's designed to say here's the content that kids should learn in this course or grade and here's the test whether the test is mastered that content or not? I think
1 the nationally recognized assessments I
don't know that I am the best position to
3 say whether those are predictive or what
4 the right purpose is for them?
5 That's fine if you don't want to
6 answer it.
7 Mr. Rooney: I am worried about
8 that this is something that none of you
9 work on this. I don't want to make the
10 statement on the test.
11 I can make a statement just about
12 the even within the range of the two
13 assessments that were mentioned there is
14 you know a lot of discussion as well as
15 branding of them around whether their
16 achievement tests or the kind of
17 predictive test there's a range is all I
18 am going to say.
19 Ms. Pompa: When defining the
20 national test that it responds to all the
21 nation's children. As we look at some of
the tests that are labeled as nationally
recognized here we know that there are not
just desperate outcomes for kids, there's
desperate outcomes on a lot of
assessments. There's not and ability to
account for those differences for groups
like English learners, so for example the
two consortia who developed the state high
school, the national recognized high
school tests that the state tests over
sampled for English learners. They over
sampled for kids with disabilities.
Picking on just the ACT and the sat they
do not over sample. There's no intention
in developing those tests to make sure
they are valid for English learners. I
have the same concern if we are going to
be looking at locally developed tests that
they be responsive to the needs of all the
nations children because we have a highly
mobile society. Who know what is kind of
children will be in that district however
appropriate they are for the local
population today. So that is to me the
biggest driver as I said of deciding
whether a test is nationally recognized.
I do want to say that the criteria that
are listed in paragraph two are very
important. I would hope they are built in
very carefully into the review process
especially the first looking at the
standards that are covered in the
assessment, and then finally it takes us
back to where we were either this morning
or yesterday I was losing track of time
about the criteria that are somewhere in
the legislation that speak to the test
standards and it to me this just
emphasizes even more that those test
standards, test development standards are
psychometric standards that are been in
ESEA for a long long time, but we don't
usually look at them. They are just I
don't want to say rubber stamp we almost
do yeah, yeah we meet those. I think it's
very important that we pay attention to
those standards.

Ms. Goings: I guess I want to
clarification. Are we saying that the ACT
tests are used as statewide assessments?
If so are accommodations made prior to the
administering of the tests? Maybe I
didn't misunderstand?

Mr. Rooney: I haven't clarified
that point. This is -- there are two
different pieces. I understand that
confusion. States have discretions to
develop their assessments, and they have
to have one test in high school that they
give to all students. Some states have
selected the ACT or SAT as the test they
give as their test for all students in
high school. That is not what we are
1 talking about here. What we are talking
2 at here is the situation where a state has
3 developed it's own test so you know test A
4 is the test we give to all kids for
5 reading and math. However, this part of
6 the statute would provide the option of
7 states chose to say while all kids have to
8 take test A district could come in and
9 select this nationally recognized test
10 that meets these criteria that are laid
11 out in the statute and are approved by the
12 state through the criteria that are laid
13 out. In which case the district fits
14 either state the test A or the national
15 recognized test whether it's SAT or ACT or
16 something else.
17 Ms. Goings: Thank you for
18 clarification.
19 Ms. Evangelista: In terms of
20 criteria for the nationally -- I can use
21 my teacher voice. (laughter). In terms

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of the criteria for the nationally
recognized test I would think an important
part of that would be an accommodation for
the students that it does allow
accommodations for students which the ACT
and SAT are not tested actually provide
accommodations for English language
learners and are not accurate predictors
or measures of where those students are in
terms of English and math. That also that
they can that we can look at comparability
across groups for with those assessments.

Mr. Evers: Well, to try not to
get into the ACT or SAT is a good test
let's try this too we can say nationally
recognized assessment would be one that is
used by students and other staff. The
fact of the other matter whether we like
the ACT or SAT that's what the expectation
was in the passing this piece of
legislation. We can gyrate around that if
1 we want to. I will just throw it out
2 there that's something that's used in
3 multiple states and that would be the
4 current one of the criteria. In turn I
5 have another question that's actually this
6 but a procedure question. Is it street
7 couldn't state just say we are never going
8 to accept a national recognized test is
9 that under the authority of the state or
10 under the law?
11 Mr. Rooney: I can answer this
12 question. We think the state has the
13 discretion to do this or not do this.
14 Mr. Evers: Thank you.
15 Mr. Hager: Just a quick comment
16 on your comment Patrick I know that this
17 specific provision does not apply to a
18 state that's selected this but I think in
19 terms of compliance with the ESSA the
20 states selection of that test should fully
21 comply with the ESSA it's not our
discussion for today but you know these
all the discussion applies whether or not
it's been selected by a local school
district or selected by the state. It
doesn't matter who selected it it's got to
comply with the ESSA. That's the general
comment to that point to the specific
definition. I think the definition could
be very simple like Tony's suggestion. I
would add a qualifier, a general qualifier
that's used in the variety of states
that's in compliance with the ESSA. In
terms of what is a appropriate nationally
recognized test you have the definition of
national but also that it is compliant
with the ESSA. When we will flush out
more as we get some of these questions.
As a general broad definition I think that
will be important.
Ms. Briggs: One possible answer
is that the states use its own common

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sense in defining what national recognition is. This doesn't strike me as something to hard to look at and say that's nationally recognized and that's not. I think some of the other comments that folks are making now are perhaps better reflected in later bullets or on safeguards or combinations or the processions that states would review but on national recognition piece that seems like not too hard to answer. I just wouldn't make that part too complicated. There's a lot that needs to be complicated about that. This one doesn't seem to be that complicated.

Ms. Pompa: It's not germane to this bullet. What I am going to say is not germane to this bullet, but it's been mentioned a couple of times and that is by what some people said it sounds like the interpretation was ACT or SAT are a given
you have to approve them. It says here that subject to approval described in this sub-paragraph reflected and use. It's not a given that they have to be used or they must be used or people have blanket permission to use them.

Ms. Podziba: Patrick, I feel like we are being pulled to the next bullet.

Patrick: Do you want to go to the next bullet?

Mr. Ruelas: I actually have a comment on the first bullet itself but also to piggy back off of something Ms. Briggs said and reading through the other bullets themselves. This itself is these are they seem like state decisions in regards to you know what we are going to come up with here not really, you know, federal government kind of regulations more at the state level in regards to what
they are recognizing.

Ms. Pin Ahrens: I do think we should define this because when we are talking about a nationally recognized you shouldn't just be up to the state to decide whether a different state, local assessment was nationally recognized. They have to use specific criteria. I really support what Mr. Hager says in terms of the test complying with ESSA and the requirements of it but also having and aligning with the accommodations that are in line with state policies for accommodating folks and students with disabilities in the English language learner. I think it's really important to have that somewhere in the criteria for approval of this assessment.

Ms. King: I was looking at the issue brief, so in this paragraph two this language is straight from the statute.
This isn't sort of being proposed for our consideration. Those are the existing requirements of law governing the assessment. I like the idea of saying that national means national in terms of like all of the different children in America. Yeah I just wanted to flag that this is in the law.

Ms. Podziba: Thank you.

Mr. Rooney: Question two what safeguards could regulations include or should regulations include to ensure that all students within the district will have equal access to and seek equal education benefit the district selected assessment?

Ms. Podziba: Eric?

Mr. Parker: Speaking from a state in a district that uses ACT as an assessment for the second year going into the second year I think that some of the safeguards you know living through it I
think that we definitely have all the five
E SSA components for the most part in
meeting that requirement and I think we
will continue to. Some of the safeguards
we continue to see its college degree and
experience which is the rational and
justification for moving toward the ACT
two years ago. The accommodations, and we
are looking at all students that the
rigorous components is ongoing and the
technical assistance and support that's
provided from the state level is ongoing
with our district meaning that we are
still in year two with that assessment
process. That's just from my vantage
pointed of actually living through this
process and assessment.

Mr. Evers: I actually have a
regulation to propose. Anyway, first of
all I think there's strong statutory
language repeated here several times. If
the district has and approved test under
all the different criteria that are under
federal laws I think one addition would be
that all schools in that district must
give that test to all children in that
grade level right? I think it's similar
to what our expectations are with the
state that all kids take the same test. I
think that provision should regulatory
position of this group should be that all
students in schools of that district take
that test. A regulation from me.

(laughter)

Mr. Hager: Tony except for the
students that are under the ADAAS I love
that. The questions overlap a lot here so
I am going to try and answer what this one
I think is most getting at which is the
access to and benefit from, and so
accommodations obviously is benefit in
excess. A couple of the other ones are
the cost of the test when it's administered and you know that it be administered the parents not pay for it that it is administered during the school day. The other in terms of benefit is student’s from low income families, English learners and students with disabilities need to be provided equitable access to the preparatory materials and supports and here they may need more than a student that doesn't have a disability or that is not an English learner. Its not just equal access but ensuring they are properly prepared for these assessments. You know if you have like a vendor based training that's available you know even in some families you know typically these can be done at home both does the home have a computer or high broad band access? The students may need remediation and support for the families,
so in terms of access to in benefiting from all the preparatory work that would go in typical you know college preparing family that what would they do if it was their student that was going to take this test in terms of paying for supports and all of that stuff for the full range of students to benefit those kinds of services and supports need to be available to all the students.

Mr. Pohlman: I'm sorry some of my questions don't fit neatly in your bullets. I am trying to aim where they fit best. I think one issue is that has come up in talking to charter authorizers is the ability for them to participate in some level of safeguards or decision making as authorizers can often tend to have the accountability system can go under and what the state accountability looks like under ESSA and depending on who
holds the charter available and who holds
that chartering authority and schools
accountable there's a relationship there
to the extent practicable that the state
can have guidance that can at least
conferring with authorizer bodies prior to
allowing districts to use alternate
assessments that may interfere with
previously established accountability
systems from the authorizers can be
detrimental to the authorizers impacting
and in closing low performing schools but
also in monitoring schools in providing
transparent monitoring system for
families.

Ms. Pin Ahrens: I would like to
propose in the regulation that we include
that public stakeholders which include
parents, families and other members of the
community are meaningful engaged in the
approval process from start to finish
because they need to understand why is the
district choosing to go with and exception
from the state standards? What is the
advantage and disadvantage to students
within the district who are taking a
different assessment from other districts
within the state? I think there are also
needs to be you know explanation of what
potential implications are if the also if
the district decides to switch back that
needs to be very clear to the public
stakeholders as well.

Ms. King: It's hard to fit in
the bullets cleanly here. I would just
say on my assumption here is that any
assessment so may be this is honestly more
of a question. I second Tony's idea about
regulation. I think definitely just makes
clarifying it's meant to be a district
wide assessment used to assess all high
school students under ESEA, but then my
understanding here my assumption is we are
precluding any assessment that does not
allow for appropriate accommodation for
student’s with disabilities and English
learners, and maybe we put this in a later
bullet. Also, I want the make sure when
it says valid and reliable that means
valid and reliable for all students. It
has to be also valid for students with
disabilities and English learners right?
Is that what that means?

Ms. George: I want to add to
Rita's comment about public input and
permit a comment period allowing for
public input a written notice to parents
and stakeholders in the native language.
Counseling sessions for students after
decision has been made about the
assessment so they understand what that
decision entails and how that might impact
the post-secondary education if they want
Mr. Pohlman: I have a question or clarifying question about Tony's offer or regulation. That's the interplay between when we talked about earlier in issue number two and that if one of the Department's additions for that national recognized high school assessment in high school be an option for that assessment which takes place has been more advanced assessment from that eighth grade. I think that those two working in common what you are proffering working accommodation would almost require that the national recognized assessment option would only be available if all the students in that high school were taking it, and then students couldn't there for take an advanced eighth grade assessment and then some students taking algebra one
and others taking the nationally recognized. It would interrupt options if you put those together. It would interrupt that option. There's an area of conflict that you should potentially feel out that you are discussing.

Mr. Rooney: I appreciate Rich's point and Tony's point earlier. This is something that we may want to deliberate internally and come back as a proposal. I appreciate both your points. I don't know if we want those two to interact and hinder the other. We are happy to take that idea and kind of consider what we can do with it.

Ms. Evangelista: I have some concerns about saying that all the students in the given district have to have the exact same assessment. When I think about assessment I think about how it is driving instruction and I know that...
there are consortia of schools that have developed performance tasks that are aligned to the same standards that are meeting the needs of the students better than a lot of these pencil and paper tests. Multiple choice answer tests that actually the performance tests are asking students to think at a higher level and so not all schools yet are designed in a way where they are able to administer those tests or have implemented them yet. I am concerned about a lot of innovation that has happened around that and a lot of deeper learning communities that are working with those schools and supporting the students in those schools many of them serving underserved students. So I have concerns about that regulation putting that in.

Ms. Briggs: So the thing I am trying to think through in this provision
which I think is tricky is the context in which this issue emerges so you are going to have a district that's actively seeking to do something different than the state is offering. And the question to me is why because there's dealing with high school kids and trying to get to college and maybe they are frustrated, they don't want to take the star test for whatever reason they want to take something else. So there's some on the ground pressures in the local district that I think are going to force this issue and so we kind of want to state a position when they can be thoughtful about responding to that to address what was is likely as political situation and not just kind of have so many hurdles that you end up in a situation where it instead of being able to come to a resolution you get a huge amount of kids do test refusal. I think
that's kind of the intention when I see in this provision. Then just the other question I think I have been thinking about the examples you give here are APIV again I spend a lot of time on AP issue trying to get kids in AP kids that don't typically take them. What I like about that assessment I know less about IV. They only take that test if they have take Tennessee class and there's something kind of special about that so they have been given almost a year of instruction and then the teacher has been supported and the kids have been supported to do well in that and there's something sort of nice about that process.

Ms. Mack: I would like to kind of echo Kerri’s concern looking at this it does concern me. I hope that exemptions would be granted on you know specific needs but just a thought of a local
district or a local school being able to do something different. When we look at trying to be competitive between states, and again we are losing our places as far as an educated nation as we talk about being educated in and international sense. Setting different standards is concerning.

Mr. Cheeks: My concern here is if we maybe change the lense in terms of where we are looking at this approach. If there's a way to provide an incentive to schools, and instead of I think the language that we use here is a safeguard. You will see a way for the schools were given an incentive to provide more high level courses and to seek after exams that would challenge children on a broader level then that would I think bring this criteria or bring this focus into different perspective. In our state and I know some of the other states that are
part of our association districts are
given an option to choose whether or not
they will use a nationally recognized exit
test, but those districts are given an
option in order to advance their work and
what we found at that many of the
districts choosing the nationally
recognized exams they are finding their
children are being more successful. I am
wondering if there's a way for us to not
look at it from a punitive standpoint, but
a way of providing and incentive for
schools to raise the bar, raise it to a
level of expectation where the children
are concerned.

Ms. Evangelista: I want to
clarify it because I heard it used
interchangeably. If a different
assessment is used it doesn't mean it's
different standards. Is it standards can
mean the same and through peer review
process and you know ongoing and ongoing
and inter-reliability and all of the
processes that we have in place you can
still be holding kids to the exact same
standards.

Ms. King: I am a little bit
worried we are trying to answer the
question of all of the assessments that
one might ever give in a school in the
context of what is actually a really
narrow provision of the lay. This is not
nothing in here limits the ability of a
state or a district or a school to have
whatever assessments they have for
whatever purpose they won't to have them.
I certainly wouldn't think the idea of
improving the quality of assessment is
great and improving access to rigorous
exercise is great. I want to bring us
back on the intent of the underlying
provision which is all students must take
the same statewide assessment in 3-8 and once in high school in order for exchange for the title one funds that the state has received. With the exception of and then there is this high school assessment opportunity there is some other language elsewhere in the law not outside of the scope of this process, but elsewhere in the law there's different language about you know sort of piloting other different kinds of assessments. I think it's important to sort of note that this is a very narrow exception to what is the underlying requirement which is the same assessment statewide for the purposes of accountability.

Ms. Podziba: Alvin, do you have a comment on this?

Mr. Wilbanks: I do support this regulation. I think there comes a point in time when we do need the public
1 education and to have some areas where we
2 indicate how well we are doing not that
3 the single test does that but I think at
4 the high school level and even I like the
5 idea of a national test or state approved
6 these, but all students in the grade level
7 will take it, and I would suggest it be
8 may be different or something like that.
9 If they don't do well we have two more
10 years to work with them to get them up to
11 speed. I certainly concur with this.
12 Ms. Ricker: Thank you. I would
13 say that for the intent of this narrow
14 very narrow provision was the address the
15 was to offer some flexibility in response
16 to the growing evidence of people's
17 reactions to the misuse and misuse of
18 standardized testing data and standardized
19 calendars it's a small but important
20 provision that needs to be absolutely
21 needs to be balanced that intent with the
real safeguards to ensure students have
that equitable access and equitable
benefit from this flexibility with
ultimately I think the real sort of
exciting provision will be the 7 states
that are allowed to experiment with
performance assessments and that will be
the real future of measuring appropriately
and equitably the real talents the
students are bringing not only to the
standards, the standards they are being
held to, and I appreciate Lara bringing us
back to that a couple different times.
The standards remain constant. It is the
test flexibility that is the variable
here, and I do think ultimately it's the 7
performance assessment opportunities where
we are going to learn a lot about really
assessing meaningfully.

Mr. Chau: I would like to also
say that to support this regulation as
well, and I would like to emphasize and
put on the table that although we have
been focusing on ACT and SAT alone when
speaking with assessment experts in the
field and getting feedback from them about
this nothing in here prevents the state or
local district from adopting the SAT along
with another performance task as part of
this process either. I think we all
recognize that there's some limitations to
the way those assessments are designed and
that this certainly opens the door for
districts to experiment with other ways to
assess students as well as long as it also
is inclusive and meets all the technical
requirements in here and also aligns with
the state standards as well. I think
there's a lot of room here for
experimentation as long as I think I feel
that the requirements here that we are
including the parental notification pieces
that are very clear and provide the
guidance that local districts can have.

Ms. Podziba: Patrick I think we
are ready to move forward?

Mr. Rooney: Maybe in the
interest of time it may be best to group
the next two questions together which are
related questions. The third bullet is a
point that several of you already made so
far around accommodations on the
nationally recognized tests and how should
the regulations ensure that accommodations
provided that students on the locally
selected, nationally recognized
assessments reflects the needs of the
students under IDEA and section 504 and
the second related question is what parts
can help all students including students
with disabilities who use accommodations
are able to use their test results the
same as their non-disabled peers. I think
1 we heard it already today and yesterday.
2 If people have any other thoughts on
3 accommodations for tests that would be
4 helpful us when we are thinking about what
5 to do with this?
6 Mr. Evers: I think the federal
7 statutes are really clear on this and if
8 need be within it can be regurgitated in
9 the regulation.
10 Ms. Jackson: So this maybe the
11 exact same thing that Tony said. I am not
12 as familiar I think the accommodations
13 need to be decided by the IPE team and
14 decided upon by the test creator. We
15 cannot regulate what a private business
16 would deem an acceptable practice we can
17 create a regulation they may adapt to
18 should they want to be considered for use.
19 Ms. King: Yeah, I am trying to
20 remember if someone articulate it had
21 issue about usable for the same purposes
as everybody else issue. So this is just an issue of making sewer that like if you have let's say ACT or SAT or one of those and the test manufacture company the company that writes the test that accommodates you provided invalidates your score and you cannot submit it for a college for admissions that's not fair. If everybody else can use that score to submit to colleges for the purpose of college admissions but students with disabilities receiving and accommodation they are eligible for they can't do that that's inequitable access and violates the law. I can't remember if anybody else articulated that but that's what that issue is.

Ms. Podziba: Any other comments on questions three or four? Patrick, I think we can keep going.

Mr. Rooney: Question five is how
can a state ensure that locally selected
national recognized assessments are
aligned with content standard and provide
comparable results against the states
academic records so that they are not
being held different standards and the
states maintain same expectations for all
students?

Mr. Pohlman: So I have struggled
and in the conversation of a speaking in a
couple of specific assessments to
understand the dynamic between those
assessments that may have some criterion
reference, but also have some norm
reference as well. In how they could, how
this question could be answered if it
does. I think what that's drawing me to
this place where states have to ensure
that the test manufacturing are
demonstrating that the assessment is
appropriately to an appropriate degree

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1 criteria reference in the criteria being
2 the state standards and not norm reference
3 or compared to amongst the test takers,
4 and they should have to demonstrate that
5 prior to it allowing it use for a district
6 wide assessment. This has been a sticking
7 point to me as I have been thinking about
8 it within the context of the two put
9 together that have been mentioned not to
10 say either of them are not in the
11 assessment and validate and reliable and
12 usable for all of the reasons they have
13 been created. Think it's incumbent upon
14 us to outline that the criteria we are
15 talking about are state standards so that
16 comparability can take place between the
17 assessments?
18 Mr. Hager: Again, I am trying to
19 figure out where to put the answers I want
20 to give this is my catch all some of this
21 I touched on and recaptured it. These
assessments must be fully aligned with all
the ESSA requirements including the peer
review process. They must be fully
aligned with the state standards. They
must ensure and this is part of the bullet
points here they must be able to
differentiate among a districts full all
full range of students in all subgroups
including the lowest performing students
in either a class or subgroup and also
they must be able to differentiate among
the lowest performing schools. One of the
purposes of these assessments is which are
the five percent lowest performing
schools. The assessments you have to
differentiate among the students and
subgroups including lower performing
students and also allow for
differentiation for the five percent
schools to be targeted for support so
that's a big question whether or not the
ACT and or the SAT would be able to meet that criteria for the purpose of regulations. I think that regulations have to be very clear that this is the criteria that will be used to determine any test whatever it is would be able to be made available.

Ms. Briggs: So within the last couple of months there was a study done I think completed in Florida and some other people where they were looking at alignment that a common core assessments and a couple other assessments. I think that this is more of a point of information instead of an exact answer. Alignment is typically yes or no. It's sort of like a continuum of you know great alignment to horrible alignment and it's like it's not typically just yes or no. I don't know I might be thinking about that if I was in Tony's role how do I address

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that? Likelihood is that any test is a
local district would want to select is not
going to be completely unaligned to the
state standards. I don't know if that's a
federal regulation issue, but it's just
something I was thinking about looking at
this question.

Ms. Pin Ahrens: I wanted to
thank Ron for going into the issue that I
wanted to address which is you know making
sure that those that the locally selected
national assessments can really capture
the information that we need for the
states accountability system. Somewhere
in the approval process the state should
ask for evidence from the districts that
it can provide information that is needed
for the accountability systems. And you
know I want to point out a great paper
that just came out from the American
institutes for research called College
1 Entrance Exams a Statewide Accountability
2 Systems why not here's a reason. John
3 Cohen goes into how the ACT and the SAT
4 don't necessarily capture the lowest
5 performing students at a level that would
6 be useful for an accountability system. I
7 am looking at this table here that says
8 they don't capture information for 87% of
9 English language learners that's a
10 problem. So unless the district can
11 improve that whatever assessment they want
12 to use can capture information for I would
13 say 95% of every single student subgroup
14 because we need a 95% participation rate
15 for the accountability system if they
16 can't approve that it can capture
17 information for 95% of students in each
18 subgroup they should not be approved.
19 Ms. King: Can you talk about
20 how the sort of alignment process works in
21 peer review for the regular statewide

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Mr. Rooney: This may be a question for Peggy to answer how states demonstrate alignment in general if I can tag on about that about peer review process?

Ms. Carr: Well, the alignment across content is done with panels of experts who know the content very well and they are usually are asked to align the items with the standards and most cases if it's done in a scientific way it's done with blind alignment they don't know exactly which ones they are aligning them with that's the process that's done a lot. That's on the content side. As I read this bullet from the bottom the issues
about aligning academic standards or the standards the performance standards across the districts so that they are comparable to what the state has identified.

Mr. Rooney: I want you to clarify by --

Ms. Carr: If they are looking at multiple assessments they don't know what items, what items belong to what assessment in reference to assigning it to the content standards.

Mr. Rooney: If they are trying to compare multiple tests to the same standards?

Yes.

Mr. Rooney: I will speak to the peer review a little bit. So I think Peggy was describing this process states generally go through to evaluate the alignment of their test standards. One of the things that apartment requirements
independent alignment study they contract
with the third party not the party that
developed the assessments and that third
party is responsible for taking the
content that the state has identified for
that test and the test itself and
evaluating how well the test is measuring
that content and to Kerri’s point which is
right it's not a yes no answer it's a
range of how aligned it is, and how
aligned it is not. Usually it's strong in
some areas and weak in others and the
state comes up with a plan on how to
improve that plan over time. We expect
there not to be weak alignments and
moderate to strong alignments everywhere
to make sure they are covering the range
of the content standards, and then our
peer review, the Department's peer review
up state assessment systems we have
external peers who look at the

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1. documentation, state submit and one of the pieces of documentation about their assessments is this independent alignment study. So our peers are looking to see both how well the state is evaluating its alignment and how strong alignment they have and often times it is state because alignment is never perfect and never done and it's continuing to prove their alignment. Often times they will talk about the plan they keep continuing to change to improve their assessment system over time. It's all part of the artifacts that our external peer reviewers are reviewing and then making recommendations for the Department when we are evaluating assessments.

Ms. Carr: What you are saying is exactly right. Often what is done if you want to improve the scientific rigor you might have multiple panels to conduct.
the alignment, and then you would compare
across the panel. That's a resource
issue.

Mr. Rooney: When you say you the
state would have. Not the U.S. Department
of Education. We are not looking at the
states.

Ms. Carr: I am thinking about
the PI who would be conducting such and
activity. Yes, if there are multiple
assessments involved then such panels
might not know where the items came from
to align them. That would be a blind
approach to well scientifically but a
blind approach with the same basic
protocol that you described. I think the
real issue here has to do with the
psychometric alignment of the assessments
with regard to their standards. The
standards are usually they are going to be
different for different tests but it is
possible to align them through equal percentile equating or more advanced equating where you actually are looking at the items or the students in these more sophisticated approaches. It can be done but it is technically sophisticated approach that would have to be ensued.

Ms. King: The other part of my question couldn't you just use the same process for the high school assessment to make sure that it's aligned both in terms of content and this terms of achievement.

I am talking about high school.

Mr. Ahart: I think I will decline.

Ms. Pompa: Isn't it an obvious answer to your question? The legislation lays out the criteria and it says its state must establish technical criteria and then lays it out. So wouldn't a simple regulation just ask the state to
1 give you evidence of that? That's what I
2 would recommend?

3 Mr. Hager: I appreciate Delia's
4 referring to that ARI study the comparison
5 between the specific ACT an identified
6 that 87% did not measure the well the 87%
7 of the English language learners also
8 people that were around below the 25th
9 percentile in general, also about 71% of
10 the students with disabilities and 31% of
11 the people that were economically
12 disadvantaged in these one, two, three,
13 four categories. There's not a very good
14 match between the ACT and these students
15 performances. You know it's one study but
16 certainly in terms of you know the
17 criteria that the Department puts together
18 they have to make sure it does align and
19 whether this will or will not meet you
20 will ultimately meet the scrutiny that the
21 Department would require remains to be
seen. As a certain logic in terms of what
is the ACT or the SAT designed to do and
how it almost by definition you can see
how it's likely they would not do well in
measuring the performance of lower
performing students, they are looking for
college prep there's a logic for the
results they saw in that study.

Mr. Evers: I may have said this
already and I apologize. I think it's
important that we understand all the
things in the statute that will prevent
bad testing from happening. It might be
some things that we have to apply. The
fact of the matter this is a congressional
tent versus, I mean clearly the Congress
asked this and presidential cycle felt
that there might be national test that
meet this criteria. I am a little
concerned about sitting here prejudging
any test whether ACT or SAT. We just have
to recognize that there's pieces of
statutes that provide very specific
reasons for accepting or not accepting it
that's fine. That's my last comment for
me today.

Ms. Podziba: That's because you
think we are ending soon.

Mr. Evers: I am ending soon.

Ms. Podziba: I don't have anyone
signed up for public comment. Is there
anyone in the public that tends to address
the committee? So we will keep going.
Give me a second. Patrick, I am going to
move you with the last question so we can
start with a fresh issue. I may hold you
for few minutes extra.

Mr. Hager: I think comment that
Derrick made assuming that there is the
ones that we know of the ACT and SAT those
two that there is a shortfall assuming
that there is there a way I think this is
your comment there is a supplemental
assessments to go along with that that
would fill in those gaps. I don't know if
that's possible even in terms of the
statutory requirements, but certainly you
know that might be some wiggle room there
or something that would help out on this.
I don't know that. I just wanted to throw
those two and connect the dots.

Mr. Ahart: I know we have been
talking about ACT and SAT there's other
national recognized tests that are
designed for different purposes that I
know my district the considering. Even
though all the rules the states have to
follow to have their current state
test -- there's really bad state tests
that are not giving us the data we need
with students across the spectrum. I
welcome an opportunity to at least at the
high school level do a better job with
assessing how our system is working in the
service of our students and have better
information to help ensure they are ready
to graduate.

Mr. Rooney: So now I appreciate
everyone's patience it's been a long
afternoon our last question which actually
we started to answer both Rita and Janel
addressed this earlier with their
comments, and people have things they
would like to add onto it if there's other
things for us to consider. How can
regulations ensure that parents and
educators have the same information for
each student compared to other students
and that district administrators have
comparable data to inform district
decision making?

Ms. Podziba: Any additional
comments on that last question?

Leslie Harper: I would like to
request that the tribunal consultation be
followed, and I recommend that you know
that we hold onto meaningful tribal
consultation and putting forth any of
these pieces because state plans are
supposed to be submitted and there's
supposed to be done in concert with the
local districts. And the tribal education
agency and the LEA's we would like to
remind folks that tribal consultation
should be timely and meaningful. I can
give you a list of really specific timely
and meaningful indicators because they are
not defined right now.

Ms. Briggs: So there's some
really interesting work going on right now
in trying to present back to parents based
on these assessments. I have seen some
interesting mockups after focus group on
data and all of these different things
that just might be one place of helping
1 parents have the same information. Some
2 of these report cards are great and they
3 are really informative and they provide
4 parents all kinds of cool stuff its parent
5 friendly. It's a place to report back to
6 parents. They will have to create some
7 report that's based on this test.
8 Ms. Pin Ahrens: I want to
9 encourage that the regulation include that
10 this information is shared in a variety of
11 modes of communication that it's not just
12 through report cards or information posted
13 on a website. Recognizing that you know
14 where our families and students may or may
15 not be. I want to really encourage
16 linguistically and culturally relevant
17 modes of information that fit the context
18 of the district more practical to look at
19 the top five or so languages at a minimum
20 of the district and how they are
21 translated into those languages.
Ms. Evangelista: I also wanted to bring up the issue when you are sharing this data of overlapping subgroups. I think that you know you have schools where schools like my own where all of my students are EL's. They are all economically disadvantaged, and then I have a large subgroup of Hispanic students and a large group of Asian students, but my entire Asian group is EL's and economic disadvantaged. When you compare my Asian subgroup to the Asian subgroup in the district it's not a good comparison. It's often very confusing for families because you may have a school that's very successful but you can't always decipher that. I think as Rita said there has to be communication and meetings where this kind of information can be shared with families.

Mr. Pohlman: I think one issue
that to the question of how can they have regulations ensure there's comparable information by continuity and assessment and that there's not constant flux of assessments coming in and out of accountability systems and that's somehow safeguards around that. I think that's important for accountability systems outside the state and local accountability systems. Authorizers who are publishing data and other mechanisms utilized in jurisdictions that have a high level of school choice so whether that be New Orleans or whether that be DC or other charter or magnet rich environments that those entities provide the information about which they are also consulted as these decisions are being made so that continuity information can be rich.

Mr. Hager: In terms of Rita's comment about informing parents obviously
parents with disabilities need to be considering their mode of communication at that meeting as well.

Ms. Pin Ahrens: I just wanted to address something Lara said about inter-specialties between the different subgroups. There is new reporting that cross-tabulated data. I think because this is new it might be helpful to have in the regulation some sort of TA or technical assistance to district on how to communicate the use and access to that cross tabulated data so that we can see the intersections between race and language, between poverty and race and disability and other combinations.

Ms. Podziba: All right it's 2 minutes to five so we actually got through the whole issue that's great. We will reconvene tomorrow at nine and we will just hang on just a second. We will start.
with issue five A and five B. Patrick do you have any comments before we adjourn.

Mr. Rooney: I want to thank everyone for your very thoughtful conversation and comments. I think we have done a lot of things to work on and I need to go back and figure out how to neatly figure.

Ms. Ricker: I heard Rita ask for a subcommittee to be pulled together around defining students with the most significant cognitive disabilities or again playing with that word define which was intriguing so I certainly volunteer to be on that subcommittee. I am happy to take the names of any negotiator who would like to be on that committee.

Mr. Rooney: Thank you. All right so we will reconvene in the morning.

[END OF TRANSCRIPTION]