Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 6, 2016

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

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
U.S. DEPARTMENT OF EDUCATION

Negotiated Rulemaking

400 Maryland Ave. SW
Washington, DC

Elementary and Secondary Education Act Title 1, Part A Assessments and Supplement Not Supplant

Washington, DC
April 6, 2016 9:03 a.m.

Court Reporter:
Kim M. Brantley, C.S.R.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
NEGOTIATED RULEMAKING COMMITTEE:

SUSAN PODZIBA, Facilitator

PATRICK ROONEY, Moderator

KAY RIGLING

DELIA POMPA

JANEL GEORGE

LIZ KING

RON HAGER

MARCUS CHEEKS

TONY EVERS

LYNN GOSS

REGINA GOINGS

RICHARD POHLMAN

ERIC PARKER

LARA EVANGELISTA

MARY CATHRYN RICKER

AUDREY JACKSON

RYAN RUELAS

KERRI BRIGGS

LISA MACK

RITA PIN AHRENS

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
NEGOTIATED RULEMAKING COMMITTEE CONTINUED:

AARON PAYMENT

LESLIE HARPER

THOMAS AHART

DERRICK CHAU

ALVIN WILBANKS

ALSO PRESENT:

EXPERTS: PEGGY CARR, KENJI HAKUTA, MARTHA THURLOW and KAREN HAWLEY MILES

and

JUDY BECKER, Technical Assistant

Office of the General Counsel

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
MS. PODZIBA: If everyone could take their seats.

I know that Audrey's on her way, and Aqueelha's not feeling well, so she's going to miss today and hopefully will be able to join us tomorrow. And I know that Aaron is on his way.

Patrick I think as soon as Kerri's settled, we can get started.

MR. ROONEY: Morning everyone. Welcome back. I want to thank you all for joining us for session two of the ESSA Negotiated Rulemaking session.

Before we get started, Leslie wanted to say a blessing before we begin.

(Leslie Harper says blessing in Ojibwemowin language.)

MS. HARPER: I thank you folks, and again we just took that in the spirit of the land on which we stand and in the spirit of helping us all to work together in what is affecting all of our communities and all of our families across
MR. ROONEY: Thank you for that, Leslie.

So, again I want to welcome you all back and thank you all for being here today and for the next two days, and I also want to thank you for the first session. All the comments, and the questions and the discussion we heard was a really rich discussion, and we've been spending a lot of our time in the last week and half since then trying to think about how to incorporate the comments and questions we heard into the proposals that we provided to you late last week for our discussion -- to start the discussion that we're going to have today, tomorrow and Friday.

I did want to say a couple of things before I turn it over to Susan to help with the agenda for the day.

First, I think a lot of the discussion we heard was very helpful, a very rich discussion,
and a lot of it was about some of the operations around how states do some of the things, the topics that were discussed and the questions that we raised. I think, looking back on that discussion, I wanted to help maybe set the frame to help us think about our work today, tomorrow and Friday.

I think we tried to address a lot of your comments. I think some of the questions and discussion we had, because they do get into more operational types of questions, we're trying to think whether that makes sense for something to include in regulations or something that can be captured another way through guidance or technical assistance. And I think I just wanted to highlight I think, regulations are requirements for states, where we're trying to set the expectations and requirements for what states need to do to comply with in the ESSA. Some aspects of the discussion last time and I think probably the discussion we're going to have over the next three
days is thinking about how would a state operationalize, what are those requirements? And that may be something that it makes sense to clarify in the regulations that we're going to discuss, and it may be something that makes more sense to think about as guidance that states, or the Department, in thinking about how to operationalize that.

I'd ask you to think about that frame as you're thinking about the draft language and how we could strengthen it and pull it together and kind of come to a consensus.

The second thing I wanted to mention, based on all that discussion, we created draft language for discussion today that we're going to go over today, tomorrow and Friday. The language is designed just to use a starting point for the discussion, and we are really looking forward to the discussion about that language. After all we're here to have discussions for how we can try to improve it and strengthen it and change it to
make sure it does capture what we're trying to set
out and meet.

We did try to incorporate as much of
the comments and discussion that we could from the
first session. It also represents the
Department's priorities for what we think we
should focus on to try to strengthen the focus on
equity and the law, which is the focus of ESSA,
and we hope that in the next three days we will
have a very productive and constructive
conversation and we can move towards consensus to
get strong regulation that can help us
implement ESSA and provides clear direction to the
states and to the districts and schools in the
field.

We're very interested in trying to get
consensus and working together to try to create
the best school possible, and I'm just excited
about for the discussion. I'm sure you'll have
lots of great suggestions for us.

With that, I'm going to turn over to
Susan now.

MS. PODZIBA: Thank you, Patrick.

MS. AHRENS: Quick question. Some of our advisors are not being allowed in. I was just texted by my advisor that he's not being allowed into the meeting. They're being told it's not open for the public?

MS. RICKER: She's saying there's a protocol.

MR. ROONEY: We sent someone to the front door to make sure that they know that is not nice.

MS. BRIGGS: Thank you.

MS. PODZIBA: Now that we have that straightened out, I was wondering why it was so empty here. I thought all the controversy came out already.

So, I just want to walk through the agenda real quickly. So, in just a minute we'll look at the draft summary of our last session and make any revisions to it in order to approve it.
Then we'll go through the discussion of
issues and draft regulatory language, and you'll
see that we sequenced the issues a bit differently
this time, and the reason we did that was because
it seemed that, if we do issues such as four and
five before we do Issue One, we may avoid some of
the confusion that we had at the last meeting.
So we tried to sequence the issues in
an order that would make our discussion more
productive. So we'll see if that works. That's
the reason for that. So we will go in the order
that's listed on the agenda.
As we get into Issue Four, we'll have a
report out from the subcommittee, and Ron will do
that for us.
As usual, we will have time for public
comment each day, and there will be a public
comment sign-in sheet.
Towards the end of our last day
together, we'll kind of take a look at where
things are and have some discussion about an
optional meeting on the 18th and 19th, but we'll
know more about that when we see where things
move. And then of course next steps at the end of
the meeting.

Any questions about the agenda?
Liz?

MS. KING: So, when we're getting to
the point about reaching consensus, is the idea
that we're going to sort of postpone all of those
until Friday, or are we going to go issue by issue
and seek consensus on each sub-issue?

MS. PODZIBA: So, what we'll do is
we'll try to reach tentative agreements on the
issues, but we'll only see if there's final
consensus at the end.

So, the idea is you didn't through --
if we can reach a tentative agreement, then we
know we don't have to come back to it again. But
if there are sections of issues that are
outstanding, we'll want to have a few more passes
through those.
I'll go into more detail as we get to that.

Any other questions about the agenda?

MR. HAGER: People are coming in.

MS. PODZIBA: Alright, great.

So, I'd ask you to take the meeting summary out, the draft meeting summary. And are there any comments or questions or proposed revisions to it?

I know you all studied it carefully before you got here. Is there any dissent from approving this as our summary of meeting one?

Delia?

MS. POMPA: This is a high-level summary. How are the comments that were made by the different participants, the different members of the rulemaking team recorded, or are they recorded in any way?

MS. PODZIBA: There will be a transcript. There's a transcript being kept. We have someone present who is recording all of that.
But I think it's going to take some
time for those to become available.

MS. POMPA: That's fine. I just didn't
know. Thank you.

MS. PODZIBA: Alright. Is there -- oh,
Lynn?

MS. GOSS: Just one other quick
questions on the members present. Just to
distinguish which ones are voting and which ones
are nonvoting?

MS. PODZIBA: Right, so I just went
according to the protocols which calls everyone
"members," and then in the protocols identifies
alternates as not having a right to dissent.

Other questions about the summary?
Ok. Is there any dissent from
approving the summary?

Ok. Thank you.

Alright, so we're at the point of going
through the regulatory text, and I just want to
say a little bit, Liz, you kind of segued me into
that about what it's going to look like for the next few days.

So, we're going to go through each issue with the goal of reaching tentative agreements where we can and identifying outstanding issues where we don't.

So, we'll be what I call working the issues, and what that means is, where there are concerns, we'll be trying to break down and identify very specifically what those concerns are in the hopes that everybody will work together to figure out ways to resolve those concerns. And when the discussion starts to get repetitive, I'm likely to say, let's pass on that for now and flag it as an outstanding component of an issue.

So, I'm expecting, particularly because there's a lot of statutory language in much of the regulatory text, that there will be particular sections as opposed to a whole issue that may need further attention.

So that's what we'll be doing together.
So I just also want to say a little bit about what moves people towards consensus generally, right? So, I expect all of you signed up for this and identified or were nominated, because you came here to represent the interests of your constituents, and I expect that you define what I would refer to as enlightened self-interest differently from each other.

So, some of you may be here to get more for your constituents than others. Some of you may be here to protect your constituents from the "more" that other people are trying to get. Some of you may hope that you can get more in another forum, so, not reaching agreement might be your kind of best alternative. But some may focus on the certainty that an agreement affords, right?

So, here we are where you have an opportunity to decide and help decide what's in the regulation, whereas if there's no agreement the Department would write it in the way that it wants with the input from throughout the
Department.

Some people will want the regulations for the certainty of compliance, so one of the things that regulations do is it makes very clear what it takes to be in compliance, to create those clear lines of activity that need to define compliance, which then also avoids the potential confusion about activities that are not clearly outlined in the regulation.

So, those are some of what I see as kind of the forces that contribute to consensus, and of course all in the context of trying to reach the public goal that's intended by the law, which is what constrains what's possible here.

So with that introduction to consensus building, I will turn it to Patrick to get us started on the issues.

MR. ROONEY: Thanks, Susan.

So, before we get started I just want to do a couple of reminders, and then we're going to jump into Issue Paper Two.
So, I want to again thank everyone for all of your conversation last time. We spent a bit of time, particularly when we were on Issue Paper Six, going through the very weedy details of the regulations. We're going through that even more as you can see from the issue papers we sent you for your consideration for the suggestion today. So, I certainly want to thank you for that.

But first, I do want to remind you of how we tried to label the regulations, the proposed regulations that we created. Our committee has helped identify where the language came from, although I realize it's also a little confusing.

So, to remind you, the black text in any of the issue papers is text that existed in our current assessment regulations.

The blue text is language that we took from the ESSA, from the statute.

There are some places where things are
bolded in blue and you'll see those throughout.

There's nothing actually on Issue Paper Two, but you'll see them in some of the other issue papers.

Those are updates that we made where we had something either mischaracterized or incorrect in the language we pulled from the ESSA. And some of that we flagged in the last discussion, and I think Audrey had a good example when she looked at Universal Design, she realized it should be Universal Design for Learning in 200.2 I think is where it was. But we updated that to make sure it said Universal Design for Learning in connection with the statute.

And there were other examples people caught. When we went back through and were trying to draft discussion topics for all of us for today, we caught some other areas where things were not quite right in the language that we pulled, so we corrected that. And where we did that, we bolded it so it would be clear that that was something different from what you saw the last
And then the red text is language that we have posed for our discussion that we think helps clarify something that's in the statute. That is the distinction between the three different colors that you'll see in all the issues.

Second, I wanted to introduce Judy Becker, who's sitting behind Susan. She is in the Office of General Counsel. She or one of our colleagues from our Office of General Counsel is going to help facilitate our discussion by actually taking notes on her computer, which will be up on the screen. Hopefully everyone can see one of the screens. As we go through the issue papers, she will help try to place in the text where there seems to be some discussion of things we want to clarify the language, so all of us can see what that might look like in the text. It won't be exactly real time editing, but it will be close to real time editing, which
will help us see what the proposed change may look like. I think our concern is that it may start to get very technical quickly, and the language may get confusing to us, so we will have a draft it. So Judy is going to be the one that is going to do that for us.

On each issue paper, just to remind you, there is a background and then there are discussion questions. None of that has changed from the last time. The only thing that we focused on was the session to update at the bottom, where either we changed the language we had for you the last time in light of the discussion, or based on the discussion we proposed language for you to consider for the first time today, tomorrow and Friday.

So that's the area that is different on each issue paper, and that's where we're going to focus our attention in the discussion.

Third thing I wanted to say, before we break into the issue papers, is that we do have
the experts from the first session -- Peggy Carr, Martha Thurlow and Kenji Hakuta -- on call, so to speak, for us if we have questions, and Karen Miles or someone from her organization for the Supplement Not Supplant when we get to that issue paper.

We are not going to have them sit at our table. I think if we have questions that we'd like one of the experts to weigh in on, I think we're going to ask that we just just create a parking lot for those questions, and find a great time for a break to try to find a way to get answers to those questions. So we will try to group them together to the extent we can, or to the extent it makes sense.

I know Kenji and Martha in particular are going to be coming and going because they've got other meetings around town with the ARA this weekend. So they will be in for part of the time, but I think for the purpose of our discussion it would be good for us to just kind of put a parking
lot for those questions that we have when they come up, and then we will try to find a way to address them if we need them to address those questions.

   The one other thing I wanted to say.

   On Issue Paper Six, we provided two versions of the full regulation. There is what I will -- and using not typical terms, but what is the messy version and then there is the clean version.

   Probably you saw that when you went through it.

   The messy version is very similar to the one you looked at last time. It includes all of the issue paper language in one place. And then the clean version takes out all the strike-throughs, and so it's just what the regulation and the proposed regulation would look like. We took all the language that's in either the ESSA pieces or the five issue papers, one through 5B.

   There are some pieces that are not included in the issue papers that are only
included in Issue Paper Six, and we can talk about those once we get to Issue Paper Six. But there are two versions.

As we talked about last time, there's a lot of cross-references in the draft regulations with any issue papers, so there may be a need for us to go back and forth between Issue Paper One and Issue Paper Six to kind of show what the citation may look like. So, we will try to flag that for you if that's that case.

We added line numbers to Issue Paper Six to help with the discussion, so hopefully it's a little easier to try to find the citation that we're talking about when we're referencing Issue Paper Six.

Susan, was there something --

MS. PODZIBA: The matrix.

MR. ROONEY: Oh, and another clarification, or the other piece we added -- I think we left it on the tables. I don't believe it's in the binders -- is the matrix. It should
have been on your desk, just the Issue Paper Six matrix. I think Ron's holding it up. Thank you, Ron.

MR. HAGER: It's kind of like a cheat sheet?

MR. ROONEY: Yes, a cheat sheet. That's a good description of it.

And the intent with the matrix is to help provide a reference of where the language in Issue Paper One shows up in Issue Paper Six, or where the language in Issue Paper Two shows up in Issue Paper Six; both the messy, the red-line version, and the clean version, so you can see which version you want to look at where you can find it. When you get rid of the strike-throughs, the language could change a little bit.

Any questions on that before we jump into the issue papers.

MS. PODZIBA: Yes, Richard had a question.

MR. POHLMAN: My only question is have
any of the papers in any way changed since they were sent or publicly posted? I've got a different set of copies than are what were on the table this morning. I've got lots of things on them I'd like to use.

MR. ROONEY: There are no changes. So the version we sent on Friday, that's the version we're going to discuss.

MS. PODZIBA: Ron?

MR. HAGER: Kind of related to that, when we go through the issue papers, are we going to be looking at the language on the issue paper, as opposed to under Issue Six? Because I did the same thing. I put my notes in the issue paper. Or are we going to go back and forth a little bit?

Do you understand what I'm saying?

MR. ROONEY: Yes, I understand. So our plan will be to go through the issue papers and spend our time in the discussion on the language in the issue papers and reference Issue Paper Six only to the extent that in Issue Paper Two, you
know, we referenced 200.6, it's helpful to know what that reference is, we can go to 200.6 in Issue Paper Six, so you can see it.

But, we want to focus the discussion, and Judy is going to be editing the language in the issue paper itself and see we can come to a tentative agreement on the language.

So here we go. Issue Paper Two is the first one we're going to discuss, and it's the Exception for the Advanced Mathematics in Eight Grade.

The proposed language we have for you guys on this issue paper is really not any different than the language we shared two weeks ago. This is primarily the same with a couple of very small changes, and as a reminder our intent for this section is to create regulations that match the requirements in the statute in the ESSA around permitting students to take advanced math courses in eighth grade and that they not be double-tested; that they not have to take the
state's eighth grade test and the state's
End-of-Course Test, that they can just take the
End-of-Course Test as aligned with the content
they're actually taking in eighth grade.

There are two aspects that we want to
make sure that we're considering in the
regulation. The first is, because the test that's
given to students in high school in place of the
test they're taking in eighth grade, they have to
take a higher course and higher test in high
school, because that test then gets used in the
state's accountability system, we want to make
sure that that test is a high quality test that
meets acceptable professional standards for the
quality of the test be used in the accountability
system.

Second, we want to make sure that the
flexibility doesn't provide benefit to some
students and not others simply because of what's
offered in their school or where their school is
located, that we want to really think about the
quality of opportunity within the context of this permission.

So, there are a few minor changes that I want to point out. The first is we removed, and you can look on line three of the draft text, or lines two and three, we removed the e.g.s, "e.g. Algebra 1, geometry and Algebra 2." I think that was a discussion actually Tony had last time that it was unnecessary and it kind of focused us on a particular way of looking at the first test that maybe was not helpful or necessary within our regulations.

Second, we kept in the expectations from the ESSA that students take a different statewide End-of-Course test in high school than they took in eighth grade, and we also added, and you can see this down under romanette i, about a little more than two-thirds of the way of the page down, that we added the permission for states to include not just a state-administered End-of-Course test but also a...
nationally-recognized high school assessment.

We will talk about that proposal, the definition of what a nationally-recognized high school assessment is in Issue Paper Three. I don't know that we want to discuss that here. I think we can discuss that at Issue Paper Three.

Then we also proposed requiring that the state submit the additional statewide End-of-Course Tests for the peer review process the Department runs for all state assessment systems. And you can see that we changed the way this was done.

Oh, right. So, if you look on Page 3, the crossed out section number four, that's struck through, that was in there previously for the discussion we gave you. We revised how we did this in light of a lot of the discussion we had about peer review, so this is a place where we can work on our cross-referencing. It's actually on 200.2(d), which is, if you go to the red-line version of Issue Paper Six, if you want to look at

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
what this language looks like, it's on Page 5, the very top, starting with Line 1, where we clarify that a "state must submit evidence for peer review of state assessments," and we clarify what assessments have come in for peer review, and the first citation on line three is 200.3, formally 200.5(b), which is the part of the regulation we're looking at.

So, this was part of a discussion we had in the last meeting where I think there were some suggestions that we be very clear about what assessment tests have to come in for peer review, and the regulations actually can it not specify that within our assessment regulations. So we tried to clarify that.

The assessments, all the assessments we're going to discuss have to come in for peer review, including the requirement -- or the permission in 200.5(b) to have the students take the high school test in eighth grade and then take a higher level math course and test in high
school; that those suggestions were for the
mandatory period.

So, that may be a good stopping point.

I know that there are a couple of questions that
have been raised.

There are further aspects that I talked
about last time, or I think we can talk about
separately.

MS. PODZIBA: Patrick, I don't know if
everybody knows where the 200.5 is. Where is it
referenced in this reg text?

MR. ROONEY: So this is 200.5(b).

That's maybe that's my confusion, sorry. If you
look on Issue Paper Two, it starts with little
letter B.

MS. PODZIBA: Right.

MR. ROONEY: So, it will fit in
200.5(b). If you want to see it on the full
red-line paper, it actually starts Page 10, on
line 40.

MS. PODZIBA: Ok. Just to clarify.
MR. HAGER: We're having trouble finding in our red-line where you are. Is it the bottom of Page 4 on the red-line version, B?

MS. PODZIBA: So again, if you look at the matrix, it's Page 10, Line 40. That's where Issue Two starts in the package.

And Patrick, it may be helpful to refer to this as the "package," because --

MR. ROONEY: Ok.

MS. PODZIBA: Because it has everything, not just the Issue Six items.

MR. HAGER: He was talking about 200.5(b). It's 200.2(b). I just wanted to -- that's the bottom Page 4?

MR. ROONEY: So, sorry, I think I was looking at a different version.

So, if you want to look at the language in the issue paper, it starts on Page 10 Line 40. That's where it's the Middle School Math Exception, which is 200.5(b). All of the text below, Page 10 and then Page 11, is what you see
in the Issue Paper Two.

If you want to see the reference to the peer review, it's in 200.2(d), which appears on Page 4, starting on Line 46.

And where it references 200.5(b) is actually Line 1 of Page 5.

MS. PODZIBA: I'm sorry, I may be missing something. Where is the citation that you're referring to for peer assessment in this issue paper?

MR. ROONEY: So it's not in the issue paper.

MS. PODZIBA: Ok.

MR. ROONEY: Sorry. It's covered in 200.2, which says "all tests have to come in for peer review," including the test in 200.5(b), which is what we're discussing now.

It's not in the issue paper because it's not covered globally in the beginning of the assessment.

MS. PODZIBA: Ok.
MR. ROONEY: In the package.

MS. PODZIBA: Ok, so if I understand correctly, the discussion is essentially on what we have on the issue paper on Page 2. Is that where we should be focusing?

MR. ROONEY: Yes. I just wanted to clarify that change in the regulation is then referencing 200.2.

MS. PODZIBA: Ok.

MR. ROONEY: So it will get a little bit easier. I'll get a little bit better at that.

MS. PODZIBA: I think everyone will.

I'm going to open the floor for discussion.

Liz, I think you were up first.

MS. KING: I just had a question about the term "state administered" and wanted to ensure that that meant statewide.

Do you want me to say where that is?

So this is 200.5(b) iii: "In high school the student takes a state administered End-of-Course
MR. ROONEY: I think under state-administered we didn't necessarily mean it would be a statewide test that all kids took, but it would be a state --

MS. KING: Right, sorry --

MR. ROONEY: It would not be a locally developed assessment. It would be a state assessment.

MS. KING: Right, my understanding is it would be the same assessment for all students under this exception. So every child who is in eighth grade taking the high school test would then take the same test in high school as all of the other children who in eighth grade took the high school test.

So it's statewide in that it only applied to the children covered under this exception.

MR. ROONEY: I don't think it would
1 have to be the same state-administered test. So
2 you could assume -- you could imagine, I think,
3 that an eighth grader who takes Algebra 1,
4 and that's the high school test in the state, they
5 take Algebra 1 in eighth grade, that when they get
6 to high school, some of those kids could take the
7 state geometry test; some of them could take the
8 state Algebra 2 test. That there would be --
9 states would have a little bit of discretion, but
10 it would have to be a state assessment, or a
11 nationally-recognized assessment. Some kids could
12 take the SATs; some kids could take the ACT.
13 MS. KING: Yeah, ok. No, I think that
14 that makes sense terms of affirmative
15 administrative perspective. I was just trying to
16 find out what the language meant. So I'm
17 comfortable with that interpretation. I don't
18 know if it needs more words, but I hear what
19 you're saying. So I'm comfortable with that.
20 MS. PODZIBA: Richard.
21 MR. POHLMAN: So I want to focus on this
language in 3 sub i (a) of "more advanced than the assessment". I think that it has brought up for me questions about course sequencing, but also about the fact that the SAT or ACT isn't necessarily a more advanced assessment than a subject-specific geometry or subject-specific Algebra 1. It merely tests different things, and I think the inflation of "more advanced" and "different" here could lead to some confusion, and I wonder if there's other wording that we could work on, you know.

LEA states, others have flexibility in their course sequencing, and I think we need to be sensitive to that in the regs, and I don't think its entirely clear what is meant by "more advanced". There's a definition --

MR. ROONEY: I'm open to discussion about it. That's from the statute directly and that's the point of regulations to clarify where things could be clarified. So I'm open to other discussion or if you have language to propose.
MS. PODZIBA: Richard, do you have an alternative?

MR. POHLMAN: I will work on one.

MS. PODZIBA: Ok.

MR. POHLMAN: I don't have anything that I especially like. So if there's others in the room that could help with that on the statute of drafting right now, that's fine.

MS. PODZIBA: Kerri.

MS. BRIGGS: I appreciate the 200 point whatever where you're listing out all of the things that are going to be submitted for peer review.

I don't know that this needs to be added in. I mean, my read of this exception is that it's not a different test than what the state is already going to be submitting for high school peer review. Right? They're just taking the sequencing different.

So, it's not like, the examples, it's not like the Algebra 1 test they might take, or
the geometry 1 test they might take, but something outside of the system.

Does that make sense?

MR. ROONEY: So, I will clarify that.

I think it would be different. Right now states have to submit their tests in grades through three, and then one test in high school.

So, in this hypothetical situation, a state would say, our tests are -- the tests we have in grades through three and our Algebra 1 test is what we give in high school. Or in this example say Algebra 1. If they then give Algebra 1 you to eighth graders, they then have to have a different test that they give or that kids can take in high school, and they would not necessarily submit that for peer review because they don't have to have more than one test in high school law unless they're taking advantage of this permission in the statute.

MS. BRIGGS: Just on Richard's question, I think defining more is something you
would put in guidance and regulation, and not statutory language. I get the point, but I call that -- I'll stop.

MS. PODZIBA: Ok, Tony?

MR. EVERS: One quick point of clarification on Page 2, right at the beginning. It says "A state that administers an End-of-Course math assessment," blah, blah, blah. So, this particular regulation rule part of the law only applies to those states that have an End-of-Course exam? Do we know how many still do?

MR. ROONEY: I don't have those numbers. It's not that many. Most states waive the End-of-Course tests. It's probably about ten.

MR. EVERS: Thank you.

First of all, getting kids into higher levels of mathematics is great. Sooner or later I hope we find ways to do math a little better in this country, and frankly -- and this is not an issue for this committee but for Congress -- really, there's correlation around this issue but
there's no causation around this issue. So there's not a lot of research that supports some of this.

But anyway, in three I, it talks about "state-administered" and "course assessment". In the addition of nationally-recognized high school academic assessment, so on and so forth, I don't think it's particularly helpful. I mean, first of all I'm not sure that's with Congressional intent, but that's for other smart people to figure out.

But I just think that leads us into an area that there's going to be much more discussion, and I would agree with Kerri that it should be that piece that's taken up by Guidance. I think it's better placed there.

I have some question about the next phase, but I'll hold that.

MS. PODZIBA: Is there a discussion of Tony's point about nationally-recognized high school academic assessment as defined in 200.3?

MS. JACKSON: Can I ask him a
clarifying question?

MS. PODZIBA: Sure.

MS. JACKSON: Could you just clarify
what you meant, what you were referring to when
you were talking correlation and not causation?
You said "on this issue," and I just want to be
clear --

MR. EVERS: Yeah, just on this issue in
general.

MS. JACKSON: What about?

MR. EVERS: Well, there's not much
research here to sustain that there's a causation
issue between kids taking a higher level of math
in middle school and being successful at college.

MS. JACKSON: Ok, thank you.

MS. PODZIBA: Liz, do you have a
comment on Tony's comments?

MS. KING: Yes. I wanted to sort of
get a better understanding, Tony, of what you were
saying.

My concern is that, if your intention
is that the national high school assessment shouldn't count, which I think arguably you could make that case, then the distinction between regulation and Guidance, right, if it shouldn't count in the reg then it shouldn't not also count in the Guidance? So, it seems like there's a policy question there about -- I haven't really thought about it, so I don't have a strong thought on it one way or the other about whether it should be an option or not. But I just wanted to get some clarity on that.

MR. EVERS: Yeah, and this goes to the discussion that we will have about this issue, but as far as the state's responsibility to vet, in a very minor term, but essentially to say that this test is alright, I think that's really complex work. I mean, you don't have the ability to do it. So I just think it's a better Guidance technically, technically assisted. I'm not opposed to having it be simply more than an End-of-Course exam, although I would suggest
Congressional intent was pretty clear on that,
This is what it said, and expanded it to beyond,
This is what it said, I'm not sure is particularly helpful.

So there's two issues there.

MS. PODZIBA: So, Tony, just to be on the language, is your proposal to strike "nationally-recognized high school academic assessment" as defined in 200.3(d)?

MR. EVERS: Yes

MS. PODZIBA: Ok. Lynn, is your comment on this issue?

So, what I'm going to doing is trying to get an issue dealt with and then move on to the next person for the new issue.

MS. GOSS: If I'm an eighth grade student and I'm taking Algebra 1, so then at the end of the year, then when I'm an eighth grader take the other assessments, so the state test actually has other tests that go with that, so you're in that whole process, and then you're
going to take then, if you use a test at the high
school, so then you're actually creating more
chaos, as well, as far as more testing. So,
because if you chose the ACT test, that tests more
than just math.

MS. PODZIBA: I don't have the answer
to that question, but maybe someone else might.

MR. ROONEY: Sorry, can you clarify the
question, Lynn?

MS. GOSS: When you're talking about
just a course work, so, when you're doing the math
and then you're talking about a
nationally-recognized test, I'm not aware that you
can just pick and choose portions of the ACT test
apart. You take the whole ACT test, which is
all-inclusive of more than just math.

MR. ROONEY: Right. So that ACT would
be reading, math and science, and the SAT, that
would just be reading and math.

MS. GOSS: So, this is just addressing
the math, so that could lead to more overtesting
because they're being assessed for reading and the social studies and the science at the eighth-grade level, and then they're assessed at the nationally or whatever is determined at the high school level in eighth grade.

MR. ROONEY: That's true. I see your point now. Thank you for clarifying.

MS. GOSS: I'm just asking if that's what's the intent was.

MR. ROONEY: I think in practice it wouldn't lead to more testing, because most of the kids who are taking advanced math courses in middle school are likely already taking the nationally-recognized assessment, if it were SAT or ACT, that they're probably taking one of those two things in high school.

I don't know that in practice it would lead to more testing, but I don't have any data that would say that that's true or not, that presumption.

Sorry, are you asking about whether...
they take the SAT or ACT in eighth grade? Because they would take that in high school. At some point in high school, the kids who take the high school End-of-Course Test in eighth grade, at some point in high school they would have to take a higher-level math test, whether that was another statewide End-of-Course Test or the nationally-recognized assessment.

So, it could be at some point between grades nine and twelve.

MS. PODZIBA: Ok, so still on the proposal to delete "nationally-recognized high school academic assessment" as defined in 200.3(d), Liz, did you have a comment on that?

MS. KING: Yeah, I just wanted to agree with Tony. I think he's right.

And then also to Lynn's point, I think it creates confusion because of the structure of the nationally-recognized assessment. There's a different level of state discretion about whether or not the state chooses to have one of these, and
then also it is LEA wide.

I think Lynn is right in that we would have a high school student who would then, either for the purposes of their high school accountability, be taking just the math part of some other assessment that no one else in the LEA is taking, in addition to taking the ELA and science portion of the statewide assessment that everyone else in their LEA is taking, or they would be taking both the nationally-recognized assessment, ELA and science, as well as the statewide ELA and science in high school.

So I think it does create a confusion that I think is not helpful.

MS. PODZIBA: So, did I understand you,
you're supporting that proposal?

MS. KING: Yeah.

MS. PODZIBA: Ok. Is there anybody who does not support the proposal to delete that?

MS. RICKER: Could I just get a clarification --
MS. PODZIBA: Yes.

MS. RICKER: -- as to what it would read as?

No, I got it, ok. I didn't notice the other screen there.

Thank you.

MS. PODZIBA: Is there anybody anyone who would not support that deletion?

Kerri?

MS. BRIGGS: No, it's not that I don't support it. I just want to understand the implications...

So, in eighth grade I take Algebra 1.

I get to tenth grade. My district decided to do ACT. That means I'm taking ACT and geometry.

Is that what that means?

MR. ROONEY: Yes, that's what that would mean.

MS. PODZIBA: Mary Cathryn?

MS. RICKER: Thank you.

Is the unintended consequence of this
then that a state would have to develop an
End-of-Course assessment? I'm just trying to
understand the language as it is right now.

MS. PODZIBA: Tony?

MS. RICKER: Or intended consequence.

MR. EVERS: The only states that this
applies to are those that have End-of-Course
exams, or can get one. So, I think we can
probably assume that there is something at the
high-school level.

The very first sentence in this rule
says, "a state that administers End-of-Course
mathematics assessment" and whatnot. So that
limits this whole thing to those ten or eleven
states that do that. And if you have
End-of-Course exams, it's likely you would have
some End-of-Course exams in high school. In fact,
that's where most End-of-Course exams are.

So whether that's good or bad, I mean,
frankly I hate End-of-Course exams, but for those
states that have them, God bless them.
And then that further is amplified in 3(i) where the Department, through I guess our input, says if a student takes a state-administered End-of-Course exam, and as Patrick talked about, that would be something that may be administered to everybody, but the state developed it and has it available to school districts.

I don't know if that helps.

MS. PODZIBA: Does that clarify or do you need some more information?

MS. RICKER: I'm just trying to walk through a student experience right now. And so, maybe it would be better if Tony, if you could even walk through a hypothetical student experience.

So, I have a student who is taking --

For a student who is in a grade-level math course, there is, like those students are not affected by this language. So at this point we are talking about a student who is in what the
state would consider an advanced course, or to Richard's point, you know, whatever the other language might be, an advanced course in eighth grade, and, so, then my question is, at some point, and then maybe this gets back to Lynn's question, at some point have they skipped an assessment?

MS. KING: Yes.

MS. RICKER: At some point are they double-assessed?

MS. KING: They never take the Eighth Grade Math.

MS. RICKER: So, in eighth grade, they will never have an Eighth Grade Math Test recorded?

MS. KING: Ever in their whole lives.

MS. RICKER: You might take the language option out of that.

MS. KING: I already did.

MS. RICKER: So in eighth grade they take what has been chosen as the secondary
assessment?

    MS. KING: Yes.

    MS. RICKER: Then when they are in high school, they take what?

    MR. HAGER: Can I answer that?

    MS. RICKER: Yes, I'm trying to make it really literal.

    MR. HAGER: Having grown up in New York state with Regents Exams, I think I can give kind of a practical example of how it would work and what the intent was.

    So, if I'm in eighth grade and I'm taking a high school course in eighth grade, I don't want to be taking the eighth grade assessment. I want to be taking the assessment that correlates with the course I'm actually taking and have that be credited for my eighth grade assessment.

    So, if I am in eighth grade taking Algebra 1, which we normally take in ninth grade, I take Algebra 1, and then I get credit for that...
if I pass it, in terms of accountability.

Then when I'm in high school, I'm probably taking Algebra 2, geometry, trigonometry, calculus, a bunch of these other assessments that go along with the courses I'm taking.

I think the goal here would be, to be flexible, one of those other courses that I'm taking in math would qualify me for my one math course in high school. So, I'm taking the course in eighth grade, in an assessment that goes along with that course in eighth grade, and then when I'm in high school, I'm taking an assessment that's aligned with whatever course I'm taking in high school that follows that curriculum.

I think that's the intent of the statute, and I think that's what Tony is trying to get at as well.

So the goal would be, you take a course in eighth grade. You take the assessment that's aligned with that course in eighth grade, ninth, tenth, eleventh, twelfth grade, some time during
that grade period you're taking other courses, and 
the course that's going to count for you in your 
math would be the course that correlates with 
that -- the exam that correlates with that course.

I think that's the goal.

MR. EVERS: Right.

MS. PODZIBA: Does that clarify?

MS. RICKER: No.

MS. KING: Can I try?

MS. RICKER: Yes, because you kept 
interchanging course and assessment.

MR. HAGER: I know. I'm sorry.

MS. KING: Here's my go. So my 
theory --

MS. RICKER: What's a high school 
student taking?

MS. KING: Yes. So the high school --
all of the other high school students are taking, 
whatever, state high school --

MS. RICKER: The test they took in 
eighth grade?
MS. KING: High school -- no -- yes, yes.

MS. RICKER: Ok. So what is the former eighth grader who took the high school test taking?

MS. KING: A phantom new floating assessment.

MS. RICKER: Oh, god.

MS. KING: So, yeah. I mean, the reason that I'm ok with it is we're talking about a very limited exception that presumably is part of a state system of having eighth graders take more rigorous math.

So, those eighth graders take the regular high school accountability assessment in eighth grade, then in tenth grade they take a "something else" test, which, I understand why it's not statewide. I understand why it's a different thing.

I'm comfortable with the exception because it is no narrowly written and it is part
of a standard system around this individual group of children.

So, there's two parallel tracks, right, which track like words that makes us very uncomfortable in this context, and I think we should all remember that, but --

MS. PODZIBA: I just wanted to get her question answered and then we will have further discussion on the value of it.

Are you clear on what --

MS. RICKER: Yes. So the answer I heard is that there is a new assessment to be named later?

MS. PODZIBA: Well, I think it's --

MS. RICKER: -- for that former eighth grader?

MS. PODZIBA: I think it's the course that the person is taking.

MS. RICKER: To be determined.

MS. KING: So the state has determined what those students will take. So whether it
is -- it could be geometry. It could be trigonometry. It could be something that covers multiple -- I mean, am I -- am I

MS. PODZIBA: Let me see if there are other people.

MS. RICKER: Thank you.

MS. PODZIBA: Alvin, did you want to weigh in?

MR. WILBANKS: Yes.

I certainly concur with Tony's issue of a proposal there, but I would like to add that this does have a limiting factor.

ESSA does require the use of the national test, the ACT the SAT. So if you eliminate it here, then that does mean that you are maybe doing away with some flexibility that a lot of systems would have. And at the sake of being redundant, I would simply remind us all that, down where all this gets carried out, there is normally a whole curriculum. It's generally accepted, and if you take Algebra 1, Algebra 2,
1 it's more advanced, so there is a sequencing of
2 all of that.
3 So, I don't know if we have to specify
4 every single thing in this law. As a matter of
5 fact, I would prefer that we not have -- but just
6 the initial thing.
7 But just the limiting factor, there are
8 going to be some mistakes. I'm not sure that
9 Georgia will do this, but I think there will be a
10 number of states that will use the ACT and the
11 SAT.
12 So if it could be for that, then I
13 don't know that we should necessarily limit that.
14 MS. PODZIBA: Lara?
15 MS. EVANGELISTA: I'm just wondering if
16 we're creating the same possible situation for
17 these students again in high school. Because if a
18 district chooses a nationally-recognized
19 assessment to use, but then they are also required
20 to take a more advanced assessment than the one
21 they took in eighth grade, aren't we then
double-testing them again if we don't have this piece in the regulation?

So I would prefer to keep it in.

MS. PODZIBA: Ok. So just to help me, for new issues, I have Ron, Thomas and Delia. So if you three could put your cards down for a new issue.

For people who still want to get in on this discussion, Lynn, is your card still up on this discussion? No.

Ok, Liz.

MS. KING: Yeah, I just wanted to remind people that students -- I'm trying to agree with people here. This is so hard. I'm not getting any credit for agreeing with people. I'm getting cut off by Susan.

MS. PODZIBA: You're doing great.

MS. KING: I wanted to remind folks that these students are exempted from the assessment that other students in their LEA or state are taking in high school. So they're not
double-tested.
If they're in their LEA, they're taking the other nationally-recognized assessment in lieu of the statewide assessment those students would otherwise take for high school accountability purposes. They're not taking that. They are taking their sort of geometry test or whatever, in lieu of that.

So, I don't think eliminating this provision limits state flexibility.

I will let this go. Now I'm just weighing in on what the statute says. But I don't think eliminating this gets rid of any state flexibility or leads to double-testing.

I think this is Tony's point earlier which was just that it creates a new confusion having this in here, and that was the point I wanted to make.

MS. PODZIBA: So is it your sense that the concern that Alvin and Lara are raising about reducing flexibility doesn't occur when it comes
out of here?

MS. KING: Yes.

MS. PODZIBA: Ok.

Alvin or Lara, do you want to respond to that? Lara?

MS. EVANGELISTA: I just think it could be confused. I don't know. When I read state-administered End-of-Course assessment, I think the Regents Exam, right, in New York. As a principal, that's what I would think.

I don't think about the fact that the other test, if we choose a nationally-recognized assessment, that we could use that in lieu of it. So maybe we just need to clarify that language. I don't know. But to me, the "or nationally-recognized high school academic assessment" makes it clearer. It's not necessarily the flexibility piece. It just makes it clearer that it could be one or the other.

MS. PODZIBA: Tony?

MR. EVERS: Geeze, I hate to talk about
this issue, because I'm so against End-of-Course exams.

But let me just try this one. The law says a student takes the End-of-Course assessment. The law says that this only applies to states that have End-of-Course assessments. If you look at it that way, yes, it reduces flexibility, but frankly I would love to reduce this issue as far as kids taking End-of-Course exams.

You know, we're opening it up to all sorts of difficulty at the state level, and I'd argue at the local level, too. I think this is a real narrow thing. It's ten states, eleven states, they have End-of-Course exams. They can use that End-of-Course exam to allow children to -- and it only applies to them. It allows kids that are in these states. They can use the End-of-Course exam at the high school level in eighth grade, and then when they're in high school at a different age.

Frankly, I don't think Congress
intended this to be flexible. I think they
intended it to be End-of-Course exams,
End-of-Course exams, and that's another reason why
I think we should get rid of it.
     But, there are bigger fish to fry in
this one. I can live with just leaving it in.
     MS. PODZIBA: You can live with leaving
     it in?
     MR. EVERS: Yes.
     MS. PODZIBA: Richard?
     MR. POHLMAN: I think I have a question
if we take that portion out, are we creating a
scenario in which the only states for whom this is
applicable are those that choose to use the
Algebra 1 assessment of high school for purposes
of accountability, or those states that choose to
use Algebra 1 and geometry as state-administered
assessments.
     And I'm worried about that second
provision, because it could encourage states to
adopt two mandatory assessments in high school
that maybe is not required, but to the extent that
they are state administered...

So I'm worried about that potentially
happening. I don't know if that could happen, but
as I read this, the inclusion of that
nationally-recognized assessments could leave an
option that was not in the End-of-Course
assessment that would allow states to administer
the Algebra 1 assessment in eighth grade and then
have another assessment for which students could
take in high school and still have the Algebra 1
assessment be accepted for accountability
purposes.

Does that all make sense?

MR. ROONEY: I think so. I'll try to
clarify.

MR. POHLMAN: Yeah, I just think that is
one reason to leave it in is that it sort of does
contravene exactly what Alvin and Tony are saying,
which is that it does perhaps expand on the
statutory language, but I think it may relieve an
unintended consequence from the statutory language by including it.

MR. ROONEY: So I will try and clarify what I think the statute says under B number (1).

So it says, "The student instead takes the End-of-Course mathematics assessment the state administers to high school students under A(1)(i)(b) of this section," and that is the requirement that there be one state assessment that is administered to all high school students in the state.

So this is clarifying that this permission is for those kids who are taking a course that is aligned to the state's high school End-of-Course Test, and it has to be the same high school End-of-Course Test that is administered to all students in that state. So there isn't an option for states to have multiple End-of-Course tests to meet this requirement. They need to identify, Our high school End-of-Course Test is this.
And then in eighth grade the kids are taking, of course, aligned with that, they can take that test, so long as they then take a higher level math course-end test in high school.

MR. POHLMAN: So the first part of my statement is true. This is really only an option for -- well, I guess if a student is taking geometry in eighth grade, which there are not a lot of --

MR. ROONEY: Right.

MR. POHLMAN: -- those testing to geometry. In eighth grade, there are not a lot of those. But the more common would be Algebra 1 is that state-level high school assessment, and students are able to use that in eighth grade for purposes for accountability. That would be the far more common scenario.

MR. ROONEY: That would be the mostly common version. It's possible that states could say, Our high school test is geometry, and some eighth graders take geometry, and they could take
the geometry test in place of the Eighth Grade Test.

And then in high school they would have to take something higher than geometry, an End-of-Course test aligned to that course, that they then use for accountability in high school.

MR. POHLMAN: Right. But if the state said that, We are going to make the option of state administering both Algebra 1 and geometry, we're only using one for the purposes of accountability, but they're state administered, then would the students in that state be able to take Algebra 1 as the eighth grade assessment and then use geometry, for instance, however as the --

MR. ROONEY: So the state always has the discretion to have multiple End-of-Course tests that they require their kids to take.

MR. POHLMAN: Mm-hmm.

MR. ROONEY: We don't require that in federal law. The ESSA does not require that.

MR. POHLMAN: Sure.
MR. ROONEY: The state has to identify what is the test that they are administering to all students in the state that meets the requirements to have one test in high school. That is the one test that we're referring to.

MR. POHLMAN: They will basically be weighing the priority of, Do we offer Algebra 1 End-of-Course option for eighth graders or do we shift assessments for those states that have said, This is geometry."

MS. PODZIBA: I just want to shift the discussion, because if I understand correctly, Tony, did you withdraw your proposal?

MR. EVERS: I'm ambivalent to it, but I guess so.

MS. PODZIBA: Ok. Is there anyone who can't live with leaving the language in as it is?

Audrey.

MS. JACKSON: This isn't that I can't live with it, but I just have a clarifying question.
If we're talking about students who are taking advanced math courses, I'm not sure why you would -- what the benefit would be of using the nationally-recognized assessment at an eighth-grade level, for an eighth grader would be and imagine that they would ultimately desire to take it again later on, if it's an ACT, SAT type of thing for college entrance exams. I may be misinterpreting and mixing up the assessments, but I don't see -- I don't understand. I'm confused by that.

MR. ROONEY: Let me try to clear your point up, Audrey. I think I hopefully will clarify it.

In the example Rich and I were just using, if the state's high school test was Algebra 1 for high school, a student taking Algebra 1 in eighth grade would take the Algebra 1 test. That is the only option they would have. It would have to be only for those students taking Algebra 1. They could take the Algebra 1 test.
Then when they get to high school, they have to take another test, and the way this section is written, it would provide discretion to states to determine whether it's another state-administered End-of-Course Test -- geometry, Algebra 2, one of the other Regents test in New York, to Lara's example -- or a nationally-recognized test like potentially the SAT or ACT.

So they would take that at some point in high school. They wouldn't take that in grade eight.

In grade eight they're taking Algebra 1 test, because that's the state's test and it's in theory providing some flexibility for states in terms of what options they provide to those kids in high school.

MS. RIGLING: Can I also clarify that? As I think we talked before, this option is only available to states that have End-of-Course high school assessments. It's not
an option for a state that would have an on-demand test, for example, in tenth grade or eleventh grade, or that perhaps chose to use the ACT or the SAT for their high school assessment.

Those students would not be taking the ACT or the SAT or their state high school on-demand test in eighth grade.

It's merely to get those students that are taking a course in eighth grade that is a high-school-level course that the state considers to meet its requirement to have a high-school-level course and assessment in high school. Because the students are taking that early.

So I think the statistic was maybe ten or eleven states right now have End-of-Course high school assessment that they use for federal accountability purposes. That's also an important distinction here.

MS. PODZIBA: Lynn?

MS. GOSS: Is part of the confusion the
1 "state-administered" words in there, and can you remind me why that was added in?

MR. ROONEY: So our purpose with adding "state-administered" is to focus on that this has to be a state test. It can't be a locally developed End-of-Course Test. A lot of districts have End-of-Course tests that they use for other purposes in the district, but because this is the state's assessment system, for this permission in states that it should be a different state assessment that could be an End-of-Course Test.

And I think Liz' point earlier, it would not necessarily have to be a statewide test that the state requires all kids to take, but it would have to be a state's End-of-Course assessment.

MS. GOSS: So, it basically is statewide kids -- statewide test for that subset of kids that are taking the Eighth Grade?

MR. ROONEY: Yeah, but I wouldn't characterize it as statewide, because that makes...
it sound then like all kids are taking it.

But it could be the case that Algebra 1

is the test that all kids have to take. Eighth

graders who are in Algebra 1 can take the Algebra

1 test, and the state could make available a

gytest and those kids would have to take

the geometry test in high school. But not all

kids would necessarily have to take it. That

would be at the state's discretion.

MS. PODZIBA: Ron?

MR. HAGER: So I think, Kay, you

finally clarified it for me.

So, if a state has chosen the ACT or

the SAT as its high school assessment, then this

whole provision would not even apply to those

students.

That kind of deals with Lynn's question

about the double-testing. This only applies if

they have a specific -- as their high school

assessment a specific End-of-Course Test.

So I think that makes it clearer for
me. So I'm good now.

MS. PODZIBA: OK. So it sounds like it stays, and I don't want people to feel bad about this. This is what this looks likes. This is what we're going to be doing for the next three days. We're going to go over it, because this kind of discussion helps clarify what it actually says.

So, I'm ready for a new issue and I think Ron you're next on the new issue.

MR. HAGER: It's kind of like the lawyer in me question I guess, and parallel construction, was there a reason why you put in under the high school test under 3 subette (i)(b), the appropriate accommodations but didn't include it up above in B(1) for whatever they're taking, Eighth Grade?

Was there something that you had the reference to the accommodations in one spot and not the other? Was it intentional? It just kind of popped out to me.
MR. ROONEY: So I think our answer to
that would be that, because the high school
assessment state has to demonstrate that that
assessment is valid, reliable and fair and that
they provide reasonable accommodations for all
students, that that is covered elsewhere in the
regulations.

But under 3, this is just about that
other high school test and clarifying that that
test needs to be state administered or a
nationally-recognized test, they need to make sure
ey're providing appropriate accommodations.

And then the reference to 200.6, which
is where we get into all the accommodations for
English learners and students with disabilities.

MR. HAGER: Got it. Got it. Because
the other one automatically has those criteria
built in. This is what Liz' point was, this high
school test, whatever it might be, we want to make
sure the accommodations are provided. Because
that's not automatic at this point. Ok. Got it.
Then I had a follow up, which is the use of the phrase "appropriate accommodations," which, I just want to put a placeholder in there, when we get to 200.6 and the accommodations questions, so, I just want to say that when we talk about that issue, how it does cross-reference here we need to talk about here.

MS. PODZIBA: Ok. Thanks.

Thomas, your next new issue?

MR. AHART: On Page 3 Item 4, "Where a state demonstrates that it offers all students in the state the opportunity to be prepared for and to take advanced mathematics course work in middle school," I was wondering where that came from and how state might demonstrate that?

MS. PODZIBA: Could you hold off on that, because we were just looking up to the end of Page 2, and then --

MR. AHART: Ok.

MS. PODZIBA: And then Patrick will introduce that rationale. Thanks.
Delia?

MS. POMPA: I had the same question.

MS. PODZIBA: Ok. It looks like we are
up to that, Patrick.

MR. ROONEY: I assume that there would
be some discussion of this topic or this
paragraph.

So this is paragraph now Paragraph 4 on
Page 3, "Where a state must demonstrate that it
offers all students in the state the opportunity
to be prepared for and to take advanced math
course work in middle school".

We did talk about this in the last
session and this language hasn't changed. This is
something the Department has asked states to do
previously, or currently through the ESEA
Flexibility Plan. We talked a little bit about
what kinds of things states demonstrated, but
through the ESEA Flexibility waivers that we
provided, one of the things states could ask for
was this exception for middle school students
taking advanced math, and we asked states to
demonstrate how they're making opportunities
available to all students.

This could include data showing how
students have had access to advanced math in
middle school, but it also could include state
policies of how states and districts are providing
opportunities for students, such as through
distance-learning options, dual-enrollment
programs with community colleges, and, you know,
other state-determined options.

I think our intent in the regulation
was to set the expectation, but not to be
prescriptive on how states demonstrate how they
have met this requirement.

It may be a good thing to talk about
Guidance that may help support how states would
come in for this, but in the regulation it's
laying out the expectations.

MS. PODZIBA: Yes?

MS. POMPA: So if 4, and I understand
where you're going, if 4 fits under the middle
school exception and the middle school exception
is only for places where there is an End-of-Course
4 exam, is this encouragement that's provided for
elsewhere, where the kids aren't taking
End-of-Course exams?

It seems very specific, if I understood
what Tony and others were saying, that this is
only for states with End-of-Course exams.

MR. ROONEY: That's correct. This
whole section only applies to states with
End-of-Course tests that want to provide
flexibility for their eighth graders to take the
high school tests in eighth grade and then take a
different math test in high school.

MS. POMPA: So for districts or states
that allow eighth graders to take a higher level
course, or encourage it, but they don't have an
End-of-Course exam, would number 4 apply?

MR. ROONEY: No. Remember, this
regulation is about state assessment systems and
the requirements for states related to their
assessments. It's not about the course-taking
patterns or the curriculum that's done at the
state and local level, which is not something
we're contemplating or permitted to contemplate.

MS. POMPA: It just seems like you're
couraging the state to make these options of
higher-level courses available, but it's only in
the case of an End-of-Course exam, in doing this,
weren't you trying to encourage states to offer
higher-level math to kids, not just in places
where they have an End-of-Course exam?

MR. ROONEY: So I don't disagree with
that concept. I think our challenges are what is
our ability to do that, and I think we are
focusing on is, if states are taking advantage of
this permission in the statute, that they are not
making it available to some and not others within
the state; that it be an option that's equally
afforded to all students in the state to have that
ability to take higher-level math equally, and
that the state demonstrate how they're doing that.

MS. POMPA: Thank you.

MS. PODZIBA: Thomas?

MR. AHART: Yes, this begins to feel to me like advanced won't be advancing more. It will be the norm, and so how will that shift?

I guess I'm not seeing -- I appreciate the waiver discussion being in a state that wasn't granted any waivers. I'm just wondering where this language comes from in ESSA, what that's grounded in?

MR. ROONEY: So to be clear, this is in red because it's not something that's grounded in the ESSA. This is something we proposed as a safeguard in the system to help make sure that this is not an option that states offered but that not all kids have the ability to take advantage of.

We know not all kids will take advanced math course in middle school, but if they're not afforded the option because it's not -- advanced
math courses aren't offered in some areas of the state, or, you know, because if they're rural or wherever the limitation may be, the state may be thinking about how they can make those opportunities available for kids to take those courses and be able to take those tests, if they are a state with an End-of-Course test.

MS. PODZIBA: I'm going to get a couple of comments in. Kerri?

MS. BRIGGS: I think you talked about this last time, but I forgot.

What did you learn in the waiver process and what kind of information were states providing around this? Was it meaningful? I can see that this might just be a paperwork exercise.

MS. PODZIBA: I'm going to get in a couple comments, because I have a hunch these aren't proposals. These are more clarifying questions, so let's get a bunch of them.

Mary Cathryn?

MS. RICKER: My question would be what
MS. PODZIBA: Tony?

MR. EVERS: Just operationally at the state level, even though we don't do End-of-Course exams in Wisconsin, thank God, the issue here for us for similarly situated states is how you operationalize this.

In Wisconsin we have no -- school districts adopt their own standards if they want to. If they don't, they have that opportunity. They determine the curriculum.

So this is something that's very hard for a state-level organization to monitor and encourage, to be honest with you. So I find this problematic. I think it's a little beyond Congressional intent, but maybe if we could compromise on something about a state will post
information on what the states are doing and what
are best practices, it kind of gets away from the
"demonstrates" piece.

MS. PODZIBA: Audrey?

MS. JACKSON: Tom really got me going
with his "advanced won't be advanced any more"
concern, and I'm going to tie in a few things.
So, one, I think groups -- or subgroups
who have had privilege for a long time, when
you've had privilege for a long time, when equity
issues come up, it starts to feel like an effort
to oppress when actually it is just to make
equitable.

And so to that extent, I'll just cite
connections to what Kerri said and then both also
the idea of what this would look like beyond the
scope of regulations.

So perhaps in Guidance, I've been
sitting here thinking like, This is ridiculous.
How would you actually ever prove this? Because
the systemic layers that contribute to who has
access are so deep and pervasive and beyond one policy's ability to necessarily impact.

But the more I'm listening, the more I think that it's really important to have and to back up what Kerri said about lessons learned from waivers granted about practices actually influencing positive change on the ground, instead of a blanket statement that would be, Ok, this sounds nice and we're just burdened with paperwork.

But an example from Massachusetts, just to cite and clarify and bring back the kids for all of you, is that we have an advanced work program in Massachusetts that started after the whole bussing issues in the 70s.

I may have referenced this before, but students get into advanced work classrooms that begin in fourth grade based on a time-standardized test that is administered in the first month of third grade.

So that's something that highly impacts
and is correlated to who ends up in advanced math courses later on, but it goes back so many layers that no one would want to be so prescriptive with federal policy that you're saying, you know, You can't do something like that.

But I would hope that this and perhaps Guidance language around what to consider, and as Kerri said, which lessons learned from waivers prompts examples of effective implementation and analysis of these trends may help states to start to consider what policies help to reduce those barriers without being overly prescriptive.

But I just want to note that I think, even though my initial reaction is how is number 4 possible, doesn't mean that I don't think that it's important.

MS. PODZIBA: Richard?

MR. POHLMAN: I'd like to speak about the comments around local control issues that Tony and, to some extent, Mary Cathryn brought up that applies very briefly to charter districts.
Number 4 seems to me, you know, in its language, expecting a state to demonstrate that "it" offers X, Y or Z when many of our states have no actual authority or control over what's offered in schools because of state-level rules around how they can actually impact curriculum or instruction. I think could have a chilling effect for innovation, specifically in charter-rich districts.

So we are very concerned about any unintended consequences for this language, although I understand it's somewhat limited to the states too, as we discussed at first, but I still think that having that language is of concern.

MS. PODZIBA: Derrick.

MR. CHAU: I definitely want to act on what Richard just said.

Being in a district with over a hundred charter schools, I think it would be very difficult to enforce any sort of a policy to ask that every single LEA in the state demonstrate...
this piece.

I definitely want to echo what Tony Evers mentioned, that this seems like, although this was part of the waiver process, it sounds like is necessarily wasn't part of the statute.

I applaud the intent behind this in terms of ensuring that there's equitable access. I'm just wondering how there might be another way through Guidance or other ways to maybe --

I'm concerned that this is asking -- there's an assumption behind this statement that it's not happening, and I don't know if that's always the case, and I would hate to go into writing regulations that have that kind of assumption, even though I'm pretty sure that the data would probably show that there is some inequity there.

But maybe the fact that asking states to provide data might be helpful, but that might be part of the Guidance that we provide as part of this work, to be transparent with who is taking
these assessments could be something that we could put into the Guidance rather than put into the regulation.

MS. PODZIBA: Aaron?

MR. PAYMENT: Ok. So I have a parallel to another committee that I'm working on and it's the Research Advisory Council. One of our drivers, one of her desires is her tribe to adopt IRBs. So obviously we can't tell them to do it. We can't restrict them to do it. We can't tell them to do it. But we want to incentivize them to do it.

So what we have proposed is that we publish annually those IRBs, the tribes that have IRBs, and we actually publish a link to the IRB protocols that they have on their individual tribes.

So if the motivation for proving it was to be an incentive, I think you can get there with just a modest change to the language. So I'd like for them to have an expectation but not a
regulation. And so maybe the language could read, "The state shall publish efforts to ensure all students in the state" -- I missed a word. "All the students in the state to be prepared" -- "the opportunity to be prepared for all to take the advanced course work in middle school".

So it has the effect of the incentive when promoting it without actually having the regulation. And it also has the benefit of peers seeing what's being published for those tribes -- not those tribes, those communities that are more progressive than others, those states that might be more progressive, and then they might voluntarily jump onto best practices.

MS. PODZIBA: Aaron, could you read that language out again.

MR. PAYMENT: Yeah, I'll try.

"The state shall publish," instead of "demonstrates," "the state shall publish efforts to ensure all students in the state the opportunity to be prepared for all to take the
advanced course work in middle school".

So it really only changes "demonstrates" to "publish," but it does say "shall publish".

It doesn't say how frequently, and I don't know if we need to modify that, but I think it gets to the intent of the stipulation.

MS. PODZIBA: So are you leaving in "that it offers"? So "The state shall publish efforts to ensure that it offers all students"...

So is the revision just taking out "demonstrates"?

MR. PAYMENT: No, I think -- no.

Because I think that the "that it offers"-- by using the word efforts, you can eliminate that it offers, because that still sounds more prescriptive.

MS. PODZIBA: Ok. So your proposal is to leave "demonstrate that it offers"?

MR. CHAU: No. "The state shall publish efforts."
MS. PODZIBA: Right, but you're
removing "demonstrate that it offers" and
replacing it --

MR. PAYMENT: Yes.

NS. PODZIBA: -- with "shall publish
efforts to ensure."

MR. PAYMENT: Yes.

MS. PODZIBA: I just want to be sure
that I have the proposal correctly.
I have a few more comments and then we
will take up that specific proposal.

Ron.

MR. HAGER: Thank you. I just want to
reemphasize what people have said about this.

This is a critical issue, because
especially students with disabilities, English
learners, people from low-income backgrounds do
not in many districts have these opportunities or
take the opportunity to avail themselves.

So I just want to reemphasize how this
is a critical issue. How we word the language is
another question, but it is an important issue.

MS. PODZIBA: Thomas.

MR. AHART: I agree that it's a critical issue and we're inherently motivated, regardless of what federal policy either is, for all of our students, and now I know there is not best practices happening in every single individual place, but I would suggest that we strike this language and put whatever we want to address this particular issue in Guidance.

But we can go down this rabbit hole a long ways, and this has all sorts of other implications. You know, is this going to be reporting on something that really doesn't substantiate that the intent is really being accomplished is one of my concerns.

There are different contexts in different districts, and what it may look like to demonstrate to whatever standard this means, in my district it would look very different than in a small rural district, for instance.
So it feels as though we would be going through another exhaustive reporting requirement that doesn't actually accomplish the intent behind the words.

As laudable as it is, it stretches beyond what the language says, and if it's, you know -- if this is really about an equity piece, then let's include that in perhaps equity Guidance and not particular to advanced eighth grade math, which to me suggests that that's the only area that people care about, and that's not true for us.

I just feel like it's getting very narrow, and if we take this same approach on all the other issues in here, we're going to end up with a mountain of regulations that doesn't really help us benefit our students.

MS. PODZIBA: So, I hear you responding to Aaron's proposal and offering a counterproposal. What I'd like to do is get Lisa's comment and then hear a couple more
comments on Aaron's proposal before we take your proposal, which as I understand it is to delete that paragraph.

Lisa.

MS. MACK: I'm not necessarily weighing in one way or the other. I guess I'm a little bit -- I want a point of clarification. Isn't this the same exact language that we had here from miss war? I'm kind of confused why we're having this discussion now when it wasn't a discussion previously.

MS. PODZIBA: In the first session?

MS. MACK: Yes.

MS. PODZIBA: People didn't look -- I think we didn't look that closely at the regulatory language.

So Aaron made a proposal to revise that paragraph, "The state shall publish efforts to ensure all students," et cetera. Could I have some more discussion on that.

Patrick?
MR. ROONEY: I'd just ask for a clarification, Aaron, on the intent of this edit of yours.

I could read this to say, "The state shall publish data about the number of kids taking different math courses in middle school".

I could also read this to say, "The state shall publish its policies for how it ensures kids have the opportunity to take advanced math course work".

I think those are very different things. I don't know if you mean one or the other or if you mean both.

MR. PAYMENT: Both.

MR. ROONEY: You mean both?

MS. PODZIBA: Yes.

MR. PAYMENT: So my desire is that, I believe that the language and the intent is laudable, and if you believe that, while it doesn't directly connect to compelling equity, it's almost like a voluntary effort that states
can then report on what they're doing both in terms of -- well, completely what they're doing, and so I think it can help facilitate. 

So I guess now I'm wondering whether it's regulatory or Guidance, and I guess I'm flexible on that, but I think taking it out entirely misses the point that we're actually promoting. And that's what I'm interested in is promoting it.

Whether or not we can stipulate it, and, you know, we've got to have a balancing act between what we desire, what we want to happen and what states have the sovereign right to agree to do or not to do. Because we can try to stipulate it and they will find a way not to do it, because they are sovereigns.

So I'm trying to get to respecting the desire to promote it, and publishing efforts is one way to get there.

Again so what I'm willing to concede to is whether it's in the regulatory or if it's in
Guidance.

MS. PODZIBA: Thank you, Mary Cathryn.

MS. RICKER: I really appreciate this language that the state shall public to again have peers look at each other's work to see what they can adopt from one district to the other.

My concern with this language is similar to my concern with the original language, however, and that is that both assume that all districts have the resources to offer those advanced math classes.

To use an example, to bring it right back to the real experience of kids, as well, you know, I'll just use one district in northern Minnesota that, because of the political decisions of a group of people in St. Paul to starve districts of resources, were in the very unenviable position of having to cut entire programs from their high schools, and one of the programs they cut was their science program.

They could have split the difference I
suppose and cut half their math program and half their science program, but it was still very real.

It took them three tries and an excess levy referendum to get the money back generated in their community to get some semblance of that program back.

So to assume that that district just chose not to offer, because they thought, that, Oh, our kids don't need those courses or whatever, is to assume that they were misusing resources that someone else decided that they weren't going to be allowed to have.

And so, again, the question I had the first three days we met about this language is the question I had last hour about this language, and that is what does it look like for a state to demonstrate it is providing the resources for all districts, whether they be single-school LEAs, or large comprehensive LEAs, to take advanced math course work in middle school.

MS. PODZIBA: So, it sounds like
conceptually people want the intent of this to happen, but there's a lack of clarity in how to cause that to happen.

Patrick?

MR. ROONEY: So, I think hearing that discussion, which I appreciate there's definitely different sides on this, what if we tried an alternative approach to keeping this this, but to saying, "the state should describe its strategies to ensure that all students in the state have the opportunity, and then it becomes less about particular data, but it would be about how it's providing opportunities or how it's supporting its districts to provide opportunities.

MS. PODZIBA: Aaron?

MR. PAYMENT: So let's find a way to get there, because I think it is a laudable effort, and the language that I used, I'm flexible with it. The language would demonstrate -- so part of me, as a high school dropout who slipped through the cracks, would love to compel states to
do it, but we recognize that the states are sovereigns, and if you put a regulation in place that they're not going to follow, they're not going to follow it. They're going to find a way around it.

So the language that was previously stated sounded a little more affirmative of what they were required to do, to demonstrate that it offers. So that says that it's not only making it known, but also that there's things that they're specifically required to do, and they're going to push back on that.

So if our intent is to promote, then what is the right language that we can come up with for promoting?

I mean, I substituted language, "published," and I just did it real quick, because that promotes it without compelling it. To me it's not required. It's promoting. So if there's a different language --

So, before we throw the baby out with
1 the bath, because I know we're still reacting to
the original language, and if we're in
agreement -- so we probably should just decide if
we're in agreement on the original language or not
and then dispense that, then find if there's
alternate language. Because we're still reacting
to the original language, and my proposal
shouldn't carry any of the baggage of that
original language.

   Because I'm not saying that the states
have to demonstrate that they offer. I'm not
saying that at all. The language I tried to
substitute is that states shall publish efforts to
ensure all students. And that's a promotional
thing. It's more of a positively oriented thing,
and it might even compel states to compete about
what they're doing.

MS. PODZIBA: So, just from a process
point of view, this is a little less formal than
kind of a Roberts Rules of Order. So instead of
voting on every proposal, it's more that there's a
sense of people are not comfortable with it and another proposal is put toward, then we just kind of move to that.

So I'm wondering how people -- Patrick kind of countered with another proposal based on your proposal, based on the discussion of it.

So I'm wondering -- Patrick, I'm not completely sure. You used the word "should."

"The state should describe its strategies to..." and what was the rest of that?

MR. ROONEY: Sorry, the word should be a "must" actually I think in regulatory language.

"Should" is not proper.

MS. PODZIBA: So "should a describe its policies to ensure it offers all students"; is that what you're --

MR. ROONEY: Yes, I think the language on the screen is what I was proposing.

MS. PODZIBA: Ok. So can we have a discussion on that proposal?

Rita?
MS. AHRENS: Sure. My reaction is I actually prefer Aaron's proposal, which is publishing efforts, and that would include data. While it's helpful to know what the strategies have in the state's plan, I think it's important to know whether those strategies actually come to any sort of fruition so that we can see whether there are particular groups of students that we know have been historically not able to access advanced math, and by those groups of students I mean students with disabilities and especially English language learners. We know that there are disparities in terms of providing them access, and so I think that data is very important to see whether the state strategies are actually working.

MS. PODZIBA: Kerri?

MS. BRIGGS: So just operationally, a state would be thinking -- like my home state of Texas uses Algebra I as its End-of-Course Exam for high school. They would be setting up a system
ahead of time for districts to say, We've got
these two classes of kids who take Algebra 1 in
eighth grade, in Houston -- I'm making that up --
and as part of their statewide assessment system,
somewhere in that information they're also
describing the strategies they're using to think
about how to make sure all kids are prepped for
advanced math in general, with not necessarily
about the exception of two classes of kids taking
Algebra 1 in eighth grade.

Is that sort of how this would work?

MR. ROONEY: I think so. This would be
something probably Guidance would have to clarify
a little bit more to provide some support for
states in terms of what this would be. But that
sounds like a reasonable idea.

MS. BRIGGS: I don't have like a huge
issue with this thing except for I just feel I do
worry about putting in a regulation that I don't
think is going to change the dynamic on the
ground.
I mean, we haven't really talked about the data show from the waiver process in terms of what states were offering and kind of whether any data around what that looked like on the ground.

MS. PODZIBA: Ok. I'm going to take three more comments and then go for a break and then we'll pick up. Ok, Ron, you slipped in under there, but I've got a whole bunch of people who are in line.

MR. HAGER: I'll wait.

MS. PODZIBA: Thomas?

MR. AHART: Do we have a picture of what has been shared with those waiver states. I share the same concern. I think that everybody believes this is a laudable goal. It feels like it's an overextension of what's actually in the code, and then I wonder what that says about what we anticipate being included on other topics, as well.

So if it's an equity issue, let's call it an equity issue, and to me, if it's an equity
issue, it goes way beyond demonstrating that you have a pathway for all students to take advanced math course work.

So it feels like this will be additional work that won't really materialize into something necessarily beneficial or changes and practices at the district level that are going to impact kids.

MS. PODZIBA: Tony?

MR. EVERS: I think the alternative proposal is a bit more driving, driving us to the point where in regulations we're making things that are not anywhere near their Congressional attempt, such as ensuring that all -- I'm not sure if we're a state that is in this category, but to ensure that all states have the opportunity. I don't think states can ensure that.

So that's a problem. I think it would be better for us to deal with this whole thing in Guidance, but that's my preference. But I think this alternative proposal is not something I can
support.

MS. PODZIBA: Ok. Let's take a fifteen-minute break and we'll come back and see where we are. So let's reconvene at 11:05.

(Recess taken.)

MS. PODZIBA: As soon as everyone's back in their seats, we'll get started.

Alright, so I'm going to sum up where we are on this issue and then make a process proposal.

So, on Page 2 the only item that was flagged was, "is more advanced than the assessment". And there was a suggestion to move that into Guidance, and Richard, who flagged it, is ok with that being further described in Guidance but not on the regulation.

So, the only thing that's outstanding then on this issue paper is Paragraph 4, and the way I understand that issue is that there is a sense that its intent is agreed to by everyone, and there's concern that there not be requirements
that create work that don't get at the intent of it. And if that's a fair articulation of what's been said, I'm going to propose that we move on to the next issue paper and then we'll come back to this in the hopes that offline or -- that creativity emerges as people think about how to accomplish what all of you actually conceptually agree should happen. Is that ok?

Janel, did you have a comment before we leave this issue?

MS. GEORGE: Yeah, so I just had a quick comment about this, and I don't want to belabor the point, because I do agree that it's clear we all agree on the intent of this provision. It's a very narrow exception, and I think that those who choose to exercise this exception can show that they are really acting in compliance with the spirit of Title I, which is about equity.

As I said, I do agree that there is consensus with what the intent of this language is
and again don't want to belabor the point on that.

MS. PODZIBA: Thank you.

So again, when we come back to this issue, it will be around Paragraph 4. If people get some really good ideas or thoughts about how to accomplish what people are looking for, we will hopefully start with those ideas.

So Patrick, in looking at the agenda, I think that we are ready to move to Issue 5A.

MR. ROONEY: Alright, Issue 5A. That was a very good discussion. I think we set that up thinking it would be one of the quicker discussions. Perhaps I can do a little bit better job describing, hopefully we can jump into the discussion a little more quickly, but I appreciate everyone's comments and I hope we keep good discussions going. Clearly we're generating a lot of discussion, which is the purpose.

So Section 5A Issue Paper 5A is on including English learners in the state assessment systems. And you remember that there is 5A and
5(b). 5B is specifically around English language proficiency tests. So this is just about including English learners in the academic assessments in reading language arts, math and science.

I remember from our last discussion there was a lot of discussion around this topic and the questions that we posed, so I suspect that there will be lots of discussion again. I definitely want to encourage that.

So from the first discussion we heard a lot about there's strong interest in making sure the assessments provide valid and reliable results for English learners, and, I think it was Tony that mentioned that this is an area that states particularly want to pay attention to that there is a strong need in the field for these tests for English learners.

We also heard from several of you that this is a very diverse group of students with very different language needs that vary tremendously
across English learners; that's it's not a homogenous population.

Kenji Hakuta when he was here talked about native language translations of tests, which can be helpful depending upon the student's language of instruction and how much prior instruction they've had in their native language. And he also mentioned that there's been a lot of recent growth in efforts to support bi-literacy for English learners and how that may interact or interrelate to the need for native language assessments.

So based on all that discussion, we proposed the language that you see beginning on Page 2 of this issue paper. I'm going to walk through a little bit, try to walk through all of it, because I think that makes sense, and then we can stop for discussion.

So the language makes clear that English learners need to be provided appropriate accommodations, and I think a point Ron might have...
made the last time, if you look under (f)(1),
capital A, near the beginning we changed
"reasonable" to "appropriate," so it's
"appropriate accommodations," because that's the
language that's actually in ESSA.

And then we further described that
"States must ensure that English learners taking
tests with accommodations get all the same
benefits as other students taking the tests
without accommodations." And this bullet
reiterates sections that are in Title VI of the
Civil Rights Act. "A state must ensure that a
student who takes an accommodated form of the test
can still use the results for all the same
purposes as the student who takes the test without
accommodations; that there is no separate result
for those kids just because they're taking the
test with accommodations. And that is capital A,
under romanette ii.

And then, next the, "State has to
provide a state-determined definition of languages
present to a significant extent," and we spent a
fair bit of time in the first session talking
about what that language meant.

In this proposal for your
consideration, we left that specific definition up
to each state, but we established some criteria
here in our proposed regulations of what states
had to include, criteria they had to include, and
required that the state identify the native
languages it has, the native language tests it
has, and those for which it thinks it needs a
native language translation but has none
available, and then ask for the plan for how the
state is going to make those native language tests
available.

And the state has discretion to
describe what it's done to make every effort to
have those tests available for any of the native
languages -- identified that it needs, including
describing why the state cannot develop such
assessments, and you can see that on the top of
Page 3. It's a little hard to follow. It's actually the capital E is where we describe that, under number 3, under E on the top of Page 3. And then in section four -- no, that's section three, I'm sorry, we set out the minimum criteria the state must follow in defining what it means to be "significant extent".

And, you know, as we described, as I mentioned a second ago, we didn't define this term, we didn't set a threshold, but we provided some criteria that states can use when they're thinking about how to define this within their states, which we think sets a floor for what the state would have to include, but allows states discretion to figure out what actually makes sense in their context and with their population.

So, we think this is a reasonable way to try to take into account the needs of the state and also the comments we heard in the first session.

So we think the state should identify
the language that's most commonly spoken other
than English by its English learners, and, based
on comments from a lot of you, I think Lara,
Thomas, Leslie, Aaron, a lot of you had the same
kind of comment, they should think about the
diversity of languages spoken. We think that it's
important that the state consider other languages
spoken in pockets in the state. So we tried to
make that clear in our description that you
should -- that the state should take that into
account in identifying the languages that are
present to a significant extent.
With that I'll stop and see if we want
to have a discussion on that aspect. So, you
know, it covers through most of Page 3.

MS. PODZIBA: So I will open up the
floor for discussion.

Delia.

MS. POMPA: I'd like to start with a
couple of questions. First, and you may have
answered it when you talked about the meaning of
A, "ensure that the use of appropriate accommodations do not deny," blah, blah, blah.

I was being hopeful that that included access to instruction in that language, because we did talk about the fact that it's meaningless to assess a student in a language if he's not being instructed in that language. But in how you described it, you're actually not talking about that. Are you?

MR. ROONEY: I don't think so, but can you clarify what you mean or how you would try to capture that within the regulations?

MS. POMPA: Well, in the criteria for developing these Native Language Assessments, for example, you don't talk about validity or you don't talk about aligning them with standards. I don't know if that's because you think it's connected elsewhere in the law, but it's not specifically stated here that if you're using native language assessments they should also be aligned with standards and there should be some
connection to instruction.

MR. ROONEY: So to the first point, and if you look at on Page 2, (f)(1), where we say "in general," underlined, at the very top of Page 2, of the proposed text.

MS. POMPA: Mm-hmm.

MR. ROONEY: So a state must include English learners in its academic assessments consistent with 200.2, which that lays out all of the requirements --

MS. POMPA: Ok.

MR. ROONEY: -- that the test be valid and reliable, follow the principals of Universal Design for Learning and other aspects, to make sure that the test is valid and reliable for all English learners.

MS. POMPA: Ok.

MR. ROONEY: And then the rest of it that follows would be, you know, if they a native language version of the test, it would have to make sure it's meeting here what's in (f)(1) about

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
the test being valid and reliable and other
requirements to meet the national professional
testing standards.

MS. POMPA: Thank you.

The second question has to do with the
provision that, at a minimum, if there are thirty
percent of English learners in a state that speak
a single language that the issue be considered.
Do you have the data on what language that would
be in how many states, where there are thirty
percent speakers?

MR. ROONEY: So, you remember the last
time we had some supplemental materials that were
in your binders?

MS. POMPA: Mm-hmm.

MS. PODZIBA: They're in your binders
again. So if you look, the landscape of the
chart, I'll hold it up. It's very small. You
can't see my copy. But it shows by state from our
most recent data that we have available at
different thresholds what languages would be

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
thirty percent of the population. So just to remind you, in order to read this chart, you have to look at the state, go over pretty far along the thirty percent, and that means at least thirty percent of English learners in the state speak that language.

MS. POMPA: So really it's Spanish and Yupik? I mean, we're not talking about a whole lot of languages.

Ok, I just wanted to clarify that.

Thank you.

MS. PODZIBA: Ron?

MR. HAGER: Hi, Patrick, and thank you for including the appropriate accommodations. Because it's English, and maybe this would be covered under 200.2, General Criteria, but I mean, there's two different types of accommodations for English learners, both the accommodations as an English learner, like you talked about how some of the assessments have the available glossaries and other types of things,
and then we have a whole other set of accommodations for English learners who are students with disabilities.

So when you have that general phrase in B -- I'm sorry, A, the capital A, Appropriate Accommodations, and maybe we should clarify bold type -- I'm asking a question, more of a clarification type question. Is there somewhere else that would refer to the accommodations as an English learner versus as a student with a disability, or do we need to have both referred to here or somewhere in this material?

I know we want both to be available, and they are available, so I just want to, you know, clarify how that would fit in.

MS. RIGLING: What language would you propose?

MR. HAGER: Maybe "appropriate accommodations both as a student with a disability as applicable and as an English learner". In other words, I would put in both here, some
explicit reference to both. Or make the reference appropriate -- like we did in the math thing, appropriate accommodations under 200.6, maybe make the reference to 200.6, and I don't know if that would cover both the ELL and the student with disability. I know it would cover the student with disability.

MR. ROONEY: This bullet is 200.6. So it becomes 200.6(f). So you've got 200 A through E is focusing on assessments for students with disabilities, and then (f) is assessments for English learners. So they end up being the same piece.

MR. HAGER: Right.

MR. ROONEY: Kay and I were looking at it trying to figure out whether the appropriate accommodations would capture the need that this is the accommodation that's appropriate for the student. It doesn't say it's an accommodation for their English learners' status. It's just says appropriate accommodation.
So I'm not sure whether that needs to be clarified or whether that would be enough on its face to be clear, that it would be heard, if you're an English learner with disabilities, that it would cover whatever the accommodation is needed for the student to take the test.

MR. HAGER: Maybe say something like that that for whatever accommodations would be needed to take the test for that individual student.

MS. POMPA: Well, I think if you had somewhere in 200.6 a clear delineation between accommodations for English learners and accommodations for children with disabilities, then you could refer to it elsewhere.

You don't have to repeat it each time, but it has to be somewhere that there are two different kinds of accommodations.

MS. PODZIBA: Lara, is your point on this issue?

MS. EVANGELISTA: Yes. I think it
could be easily confusing in terms of the accommodations and I'm also wondering, if we don't clarify that we're talking about two groups of students, or a group and a subgroup, and I'm wondering, where do people -- I mean, is it in the Guidance document where there are specific needs, specific kinds of accommodations are given to people? Is that something that goes in the regulations or is that in a Guidance document, in terms of the extent of time, dictionaries or glossaries? Is that something we would include here or in another document?

MS. PODZIBA: Patrick.

MR. ROONEY: So, Lara, to your point, that is not something the Department generally regulates on. We create the requirement that states determine the appropriate accommodations for their assessments. We don't regulate on what those accommodations can or must be, that we leave that up to the state's discretion that, as they design their assessment system, to make sure that
they're designing the test to be accessible, and where the test isn't accessible, they're identifying the accommodations kids need and then doing the appropriate research to make sure that those accommodations are appropriate and providing guidance to IP teams on how to select the appropriate accommodations.

So generally speaking, identifying accommodations that are available would be something the state would determine and it would vary from one state to the next. They're not necessarily all the same accommodations that are provided by all states. There are some accommodations that I would imagine most states provide, but there are some that may be unique to one state versus the other, and it may depend upon what the test is measuring and how they're measuring it on the test.

MS. EVANGELISTA: So then I wonder if we want to have something in there, like "appropriate valid accommodations" or
"accommodations based on research," or you know, for these groups of students, I just think something a little bit clearer. But, you know, to pick and choose accommodations -- I don't know. I wonder if we need to be a little bit more specific there about the kinds of accommodations.

MS. PODZIBA: Richard, is your comment on this point?

MR. POHLMAN: Yes. I actually think that, to Ron's original idea, as well as what Lara is just saying, it strikes me as something that could be better explored in Guidance and better articulated through Guidance than in regulatory accommodations...

So allowing for the appropriate accommodation category to be broadly interpreted and then for states to be guided to include both accommodations available for persons with disabilities but also ELL accommodations.

It just seems to make more sense than to over regulate or over proscribe here to allow
the state for the flexibility for providing most amount of appropriate regulations, not to narrowly define that issue.

MS. PODZIBA: Ron?

MR. HAGER: The first thing is I did go through and try to find an answer to Lara's point, and the general point -- and Delia's. I see specifically references to the process for determining accommodations for students with disabilities as a whole process spelled out, which we're going to be getting to when we get to question 4(a). So there has to be regulation on a lot of that. It's just a question of what we'll say.

But the issue of accommodations for English learners, I didn't see any reference to that in 200.6. So, I don't know if we necessarily have to have a lot of detail on that one, kind of picking up on your point, but I think we should have some reference to accommodations for English learners somewhere, and that would seem to make
the most sense to do it here.

So you could put in "appropriate accommodations for students with disabilities and other appropriate accommodations". It could be something that open-ended, but I think we want to have some clarification that the accommodation phrase has got two different groups that it refers to, and since we're using it here, it makes the most sense to me to make that clarification here.

MS. PODZIBA: Liz?

MS. KING: Yeah, I just wanted to first make sure that when we're referring to accommodations provided for students with disabilities that we're specifically making reference to those accommodations they're eligible for, under civil rights, under IDEA, in Section 504 of the IDEA.

MS. RIGLING: I think Judy's text, it talks about paragraph B in this section, which talks about the students with disabilities who are eligible for the accommodations. To your point,
Liz, I think that does it.

It seems like to address Ron's point, there needs to be something before the discussion of students with disabilities about accommodations, I don't know the right language, with respect to English proficiency, or

MR. HAGER: Something like that.

MS. PODZIBA: Do others have comments on this proposed language change?

MR. RIGLING: What about "with respect to their status as an English learner," and then maybe "and if applicable"?

MS. JACKSON: So I'm just wondering, there doesn't seem to note anything about who is making these decisions. So with students with disabilities under IDEA or students under 504 plans, it's clear who is responsible for making these decisions. And I'm not saying that we need to be prescriptive in who is responsible, but there should be some clarification, so it's not just anyone who speaks Spanish is given a
dictionary or a test in Spanish.

It just seems to me to be very vague in
a way that is open for lots of not great
practices.

MS. PODZIBA: Kay or Patrick, can you
revise that to bring in that issue, or is it
covered somewhere else?

MR. ROONEY: So I think there is
guidance to the data for 504 that is released on
accommodations for English learners. I don't know
how to revise that point in this Paragraph A with
respect to English learners in particular, since
there isn't the equivalent of an IEP team or a 504
plan that would help.

Do you have any proposals?

MS. JACKSON: I don't have any at this
moment, but I would like to kind of flag it as
something that we shouldn't just completely forget
about and would be open to discussing with
somebody else who feels like they had ideas on the
issue.
MS. PODZIBA: Any other comments on this proposed revision? Kerri?

MS. BRIGGS: This isn't a new issue, so there has to be answers on this already. States have been giving Spanish language assessments and others, so somewhere this information exists. It's just maybe figuring out where and how to reference it.

MS. PODZIBA: Is there anyone for whom this language even -- yes, Ron?

MR. HAGER: Looking at what you've got written there, you probably could take out "and other appropriate accommodations". I think what we could say is "for students with disabilities in accordance with," so knock out that "or". So we don't want to add language. It just makes it clear, which dealt with Lara's point. We already covered it in 200.6, so we just need to make a reference to students with disabilities, and that does it.

MS. PODZIBA: Janel?
MS. GEORGE: Sure. Just to be very clear, I wonder if we should say "if applicable for English language learners with disabilities," instead of "students with disabilities."

MS. PODZIBA: Is anyone not ok with this and Audrey's point outstanding?

Delia, yes.

MS. POMPA: Could I reserve? I'd just like to find a place where you could put in a specific mention of English learners in 200.6, because it says "other acts," but it's not very clear, and given the increase in this population and the importance they have taken on within this law, I think there should be some mention of English learners specifically.

So I'm willing to sort of talk with folks later about how that could be done. It doesn't have to be long, just a specific mention.

MR. ROONEY: Delia, are you referencing 200.6(b) where we talk about --

MS. POMPA: Two hundred point six.
MR. ROONEY: So this is 200.6(f).

That's where this full issue paper will fit in 3200.6.

It will go --

MS. POMPA: Right, but I'm saying you could take care of it if you put it in the General Introduction in 200.6, which is 200.6(a).

MS. RIGLING: Something --

MS. PODZIBA: Your mic's not on.

And thanks for reminding me. Could everybody speak a little bit more into the mics because the audience has been saying they've been unable to hear.

Sorry, Kay.

MS. RIGLING: Delia, are you suggesting -- it would be in 200.6(b). Are you suggesting that we add something? Right now that section talks about accommodations for students with disabilities. Could we say "including English learners with disabilities" to make it clear at least that they are encompassed specifically in that section?
MS. POMPA: I was talking about A, which in general talks about accommodations. Because if you put in B, it's only English learners with disabilities, and a mention of accommodations for English learners is a very separate kind of thing than accommodations for students with disabilities. They are two different kinds of accommodations.

That's why I was saying, if you could specify them under A, then you wouldn't have to put it anywhere else because you've already mentioned it there.

MR. ROONEY: Just for others, so if you look at the package, the red-line version of it, it would be on Page 12. Line 5 is where we start 200.6(a), where it says "students eligible under IDEA and other acts". So you're talking about adding in maybe a number four underneath there that would talk about English learners?

MS. POMPA: Yes.

MS. PODZIBA: Do you want to do that
language offline and bring it back?

MS. POMPA: I'm happy to do that.

MR. ROONEY: I think that would work.

MS. PODZIBA: Alright, let's hear some new issues on this package.

Rita.

MS. AHRENS: Thank you.

I just want to address on Page 3 in terms of the definition of "languages to a significant extent," Section D, where it's talking about the thirty percent -- "considering languages other than English spoken by at least thirty percent of English learners in the state," I would like to suggest that we actually put in also a population threshold there.

If you look at states like California, which is extremely diverse, it has, you know, twelve percent of its population are Asian-American Pacific-Islander students, not a single Asian-American Pacific-Islander language qualifies under this thirty-percent rule.
So taking a look, for example, at Vietnamese students, that's three hundred thousand English language learners who would be denied a language assessment in their native language.

And so I think we have to consider in these regulations, you know, large states with tremendous diversity, like California, which would not be impacted by this threshold, as well as some of the smaller states that may have thresholds larger than here, where they have the majority of the students may be Spanish speaking, which I think is about seventy-five to eighty percent in most states.

So under that scenario, your suggestion of a thirty-percent threshold I think really doesn't address the needs of a lot of English-language learners who are not Spanish speaking.

So I would propose that we put in a five-thousand-percent threshold. As you can see in here, that increases the number of languages in
a number of states, but not in every state. And I think when we're talking about serving at least five thousand of your English-language learners of the particular language, that is not a huge request. I want you to consider Title VI which does ask that we ensure that students are not discriminated against based on race and national origin. I think we would come up against a lot of Title VI complaints if this threshold were so high.

MS. PODZIBA: So could you repeat your proposal?

MS. AHRENS: I would like to propose a threshold of adding in "five thousand students" within that language.

MS. PODZIBA: So "consider languages," is that D? Is that where you're proposing that?

MS. AHRENS: Yes, correct.

MS. PODZIBA: "Consider languages spoken by other than thirty percent of English learners in the state, or five thousand"
MS. RICKER: "Five thousand students".

MS. PODZIBA: "Or five thousand students".

Ok, discussion on that proposal.

Aaron?

MR. PAYMENT: So I'd be remiss if I didn't do a very quick primer in understanding, as I used the term sovereignty earlier, and then get into your proposal, because I think our issue is even more micro than that.

So when you look at our population, so I used the term sovereignty earlier, and I just threw it out there, state sovereignty, and our sovereignty originates -- it predates the Constitution in the Northwest Ordinance, but it's memorialized in the Constitution in Article 1, Section A, Paragraph 3. That is the origin also of state sovereignty, and it's the commerce clause that its to regulate commerce with foreign nations among the several states and with the Indian tribes.
So we're not subordinate to states, and sometimes we have to remind states of that, but we also believe that we're at par with coordinations, and the original negotiations and treaties -- because we don't do treaties between the federal government and the state. We do treaties with foreign nations. So we're at par with the foreign nation. It's reinforced in treaties and court precedence, and I also referenced last time the Executive Order of the president is to do consultation.

So our sovereignty is at par or stronger than state sovereignty, according to legal precedence. But I wanted to get that out. But I also wanted to come back to, when we're talking about percentages of the population, so this is kind of a sensitive issue for us, too. We had nearly ten million -- excuse me. I'm not getting choked up. It's a cold. It's a cold from last time.

We had nearly ten million American
Indians in what's now North America prior to intervention. Based on forced assimilation policies, the introduction of smallpox, the reservation, all of that, in nineteen hundred we were only a hundred thousand people. And today we're back up to close to five million again, so we have over three hundred languages. They're distinct languages. Within those languages we have hundreds and hundreds of dialects. So, the best way to have other people understand this is, it's like French, Spanish, German. Those languages are all of some origin with Latin, but they're very distinct and different.

So when we start slicing up the number, you know, we have very small pockets that either speak Ojibwe or Navajo, or the different languages in this country.

So I'm wondering and I'm concerned about making sure that that we include language. While I support the concept that you bring up, that blocks us out in our smaller communities.
where we're doing language instruction.

My nation has forty-three thousand people.

How many does yours have?

MS. HARPER: Ten thousand.

MR. PAYMENT: Ten thousand? And we're big compared to other nations. There's some nations that only have a couple hundred. So we've got to find the right language that doesn't unintentionally put us out of the game.

MS. PODZIBA: Are you on other issues, or on this issue?

MS. RICKER: Nope, this one.

MS. PODZIBA: Mary Cathryn.

MS. RICKER: Thanks.

I had a question, and Delia first brought it up as well, is thirty percent a commonly-used threshold in other places, and why?

MR. ROONEY: So I think we were trying to come up with some criteria for states that seemed reasonable. I don't know that thirty
percent has a particular specific threshold where
it got selected other than it seemed like a
reasonable floor to set.

Just to be clear, this would not
preclude a state from creating more
Native-language assessments than they would under
these criteria. I'd also note it doesn't require
that they create Native-language assessments under
this criteria. It establishes that this is how
they define what it means to have a language other
than English to a significant extent, and then
ty they then have to provide information about what
their plan is to provide assessments to the extent
ty don't exist.

So, there are a couple of steps that
this is not necessarily the sole criteria a state
could use. They could adopt other criteria, then
create additional assessments if they wanted to.
We just tried to create -- when we formed our
criteria we tried to capture the discussion we had
in the last meeting.
Also to Rita's point, I appreciate you're adding in the number. I did want to point out that in C, right above D, is where we tried to accomplish that content without putting a number. That's it's "languages other than English that are spoken by a significant portion of the participating student population and one or move of the state's LEAs, or by a second portion of groups of kids -- kids in the state".

So it did try to think about pockets of students that may exist beyond the most popular language in the state or the thirty percent that's in A and D. So that was our initial attempt for the discussion on how to try to capture that content.

So I just wanted to remind people that that was there.

MS. PODZIBA: Audrey?

MS. JACKSON: So with regard to what you just said, Patrick, part C, I was wondering to whom is that being reported or shared with? Is
that just to the Department? I'm curious about that.

And then I'm also just wary of any -- I appreciate the need to not have one specific number threshold in part because a language spoken doesn't necessarily again mean the best language to assess in. So, I've had numerous Vietnamese students, but if I put a test in front of them in Vietnamese, even though they can speak proficiently with their family, would probably have a much harder time than in English. And likewise, there are other situations where mandating English would be an issue.

So I guess I'm curious for part C if there is any way to clarify who they would be reporting to and to consider the varied I guess needs of state, both for small states and large states.

And then I have one other question. I don't know if this is an appropriate time to ask it. It's about this issue. So I'll just name it

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
and we can table it if needed.

I'm curious with regard to what Leslie and Aaron brought out, because they spoke a lot about exemptions similar to Puerto Rico last time that we met, and not being that knowledgeable on the subject, I don't necessarily have any information to understand why or why it would not be considered at all or addressed, but it was something I saw really missing from this piece, and I would just like to learn more about it.

So that's on Page 4, and we're going to get to that at some point.

Liz?

I just have a drafting point. There's a lot of other things to say to make sure that these are the right numbers, and I want to be responsive of very small communities and children, as well, but I think we need to say something about spoken by the lesser of at least thirty percent of or five thousand, just because this is not meant to create a state option that
they would choose, either thirty percent or five thousand children, that it would be whichever is smaller for that state, and to reinforce the point that thirty percent of the children in Rhode Island is a very different number of children than thirty percent of children in California.

And the reason for not having -- to Audrey's point, certainly we want to make sure that decisions around accommodations are individualized to individual children. I think that continues to need to be an important piece.

But also to say that, you know, there exists a threshold because of things like cost and making sure that you have a good assessment and all of that. But that's about the number of children more than it is about their representation in the population.

MS. PODZIBA: Derrick?

MR. CHAU: Patrick made the reference to section C, which talks about the significant portion of the participating student population
across the grade levels, so I really do think that
D is probably not necessary, because that's
referenced in C. So that would get us away from
setting a certain percentage. And I just want to
emphasize that, at the top of Page 3 it talks
about the states deciding on which assessments --
for which year the student academic assessments
are not available and are needed.

And I feel like, I want to emphasize
the fact that, our districts, it's in their
interest to advocate for some of these assessments
if they have the student populations in
significant numbers.

So, I worry that by overregulating, it
might actually take away resource.

I mean, there's an incentive for
districts, from the district perspective, if I
have a significant population of Korean students
in LA, which we do, who are coming in already
educated, we would be advocating to our state to
ensure that we have that kind of assessment for
So, I feel like, by overregulating and setting some numbers, it might actually make it more difficult. It would take away resources, and I feel like we can -- I would advocate for more state autonomy in this instance, because this is something that local districts would be advocating for on their own.

MS. PODZIBA: Tony?

MR. EVERS: Is this the right direction? Absolutely. If I had a magic wand, Congress would have dumped that whole math thing and spent more time looking at this, providing resources for this. It's really complex.

I can tell you, and I'll just -- a quick story, I know you probably don't want to listen to stories, but five years ago or six years ago we worked with our Hmong community to translate our state test. We put a lot of time and effort in. We thought it was going to be successful.
As it turns out, at least in Wisconsin,

most of the young people, the kids that are among the households speaking it, don't spend a lot of time writing it Hmong. And it was pretty much a failure, and the Hmong community came back and said, Stop doing this. It's not going to work. And so we stopped doing it, and it's worked out, but...

I just think this is just so complex, and I understand all the issues. I really do. I think it's critical. But by gosh, I just don't know if we can address this in an appropriate, substantive way through regulation.

If I had another magic wand, I'd say, All that innovation testing money you have should be going to creating these tests so that we can assist districts in that responsibility.

So I'm just expressing my concern, my support, but I'm telling you I think this is going to be extraordinarily difficult to accomplish via regulations.
MS. PODZIBA: Leslie?

MS. HARPER: I talked at the last meeting about the different definitions of English learners, and we have a lot of different constituencies sitting around the table and we have a lot of terminology going on. So one thing that I wanted to remind people about was the very distinct definition of Native American languages.

In this law, Native American languages are described already in another title. So when we're going back and forth talking about native languages and Native American languages, there are very specific protections that are Native American languages and are Native American language medium schools already hold in other titles of this law.

And what we're talking about is aligning those portions. In this section it's B.

If we look on page twenty of the red-line piece, Line 1, this is just a small point, we can cross out, "slash Alaska Native English learners," because the term "Native American languages," as
defined in the Title III already describes and includes Native American tribes, Alaska natives and Hawaiian native languages.

So you can cross out "slash Alaska native," because otherwise that gets to be really exclusive of our places that are already protected.

I agree with the proposal to strike paragraph E, "consider languages other than English spoken by at least thirty percent of the English learners in the state". This affects our native American tribal populations, quite negatively.

Aaron has spoken about our population depths and regrowths over the last couple of hundred years, and we've been working on this issue for a while and have been told that we're statistically insignificant. We have small end size. However, to my local tribe at home, that has not been significant.

This is highly significant in that our
tribal education department and that our tribes in consultation with all of the agencies are able to prioritize our educational delivery systems in our tribal languages in a way that is comparable to what states are producing. Because what states are doing has not been working.

But that idea of thirty percent, if we look at the data that was presented to us, the supplemental data, the only native language that's represented there is Eubic. However, I can assure you there are hundreds of native languages being used and being spoken and being developed for academic content delivery.

We now have seventeen states that are participating in native language medium education. So, we're talking about, you know, a growing population of Native American language medium schools.

Also, when we talk about this, we're not talking about all Native American students.

We're talking about native language -- Native
1 American language medium students. So it's a
tiny, tiny, tiny population of all of our Native
American students across the country.
Most of our Native American students are in
English medium schools, but we do have places
where our tribes have decided to provide all of
the academic content through the medium of a
Native American language.
So I just really need to press that
definition and the inclusion of that. Because
again, if our tribes are making that decision and
working with the states and working with ED here
to provide these programs of instruction, and we
have made the priority to provide a program of
instruction in our Native American language, it
doesn't make sense to be providing assessments in
English language of any of our content.
So, we just want to -- we just really
want to stress that, you know, that very unique
definition, that very unique relationship and
understand that that definition exists already and
that we can figure out ways to do these
assessments.

But I would stay strike that on Line 1.
I'd be fine with striking paragraph B, because
that "at least thirty percent," you know, has been
addressed in part C, and we said that.

Or if you want to leave it, then cross
out, on Line 7, cross out "and," because if you
put "and," D, "consider languages other than
English spoken by at least thirty percent of the
English learners in the state," then it starts to
look like, Oh, you do all this "and", you know,
provide this thirty percent threshold, which there
are no "and's" in any of the previous paragraphs.

MS. PODZIBA: Can I take up those
proposals, Leslie?

MS. HARPER: Thank you, yes.

MS. JACKSON: I have a quick question.

MS. PODZIBA: Sure.

MS. JACKSON: I didn't have Issue Paper
Six in my binder, and so then we got one from the
back table, but it doesn't have the same corresponding pages. So, when I go to Page 20 that's not there.

Is it possible to get a copy of what's in the binder.

MS. PODZIBA: So you need a red-line version? Anybody else missing that?

MR. ROONEY: Sorry about that.

I will say that Leslie's comments that she's talking about are all actually still in Issue Paper 5A also.

MS. PODZIBA: Ok, alright.

MR. ROONEY: She was talking about on Page 3, capital B, a little bit more than halfway through, the end of that where it talks about "Native American slash Alaska Native English learners," she was suggesting deleting Alaska Native. And then further on --

MS. PODZIBA: Ok, let's take that one up first.

Is there anyone who has a concern about
deleting "Alaska Native" from that sentence? So that it would read, "who were not born in the United States and Native American English learners".

Yes?

MR. PAYMENT: Principally I agree with what she's saying, but I just want to double-check with the NCAI. Because I know Alaska natives are very sensitive to being left out, and so that might have been drafted for that purpose.

But I agree that it's already provided, and so when we have to modify it -- and then we're leaving out Hawaii, Hawaiian natives. And so we're moving towards that.

So I think that her language does -- what she's proposing does it. I just want to do one final check, and I can do it today.

MS. PODZIBA: Ok.

MR. PAYMENT: To make sure we're not unnecessarily spending a lot of time on this.

MS. PODZIBA: Sure that's fine.
Leslie?

MS. HARPER: Ooo, one point: "Native American language medium."

MR. PAYMENT: Yeah.

MS. HARPER: Because it's different than "Native American ELLs".

"Native American language medium students".

MS. PODZIBA: Not "English learners"?

MS. HARPER: If it flows any better, you can say "ELL's who are Native American language medium students".

I mean, but we want to be very specific that this is a consideration for Native American language medium students.

MR. PAYMENT: It's a narrower population.

MS. PODZIBA: Comments on that proposal?

Janel.

MS. GEORGE: Sure. And Aaron, I know
you said that you're checking the statute. I wonder if we could just cross-reference the statute, as defined in the statute or something.

    MS. PODZIBA: I didn't understand that you were checking the statute. I thought you were checking with some people.
    But does citing the statute solve the problem?

    MR. PAYMENT: Yeah, because then it should be inclusive of Alaska natives and Hawaii.

    MS. PODZIBA: Kay, are you checking on that, as well?


    MR. ROONEY: Sorry, repeat that, Leslie.

    MS. HARPER: It's the Native American Languages Act of 1990. I think its PL-109-477. I'm looking it up right now.

    MR. ROONEY: We're looking up the definition.
MS. RIGLING: We understand that there's a definition in the ESSA and it says "Definition of Native Americans and Native American language: The term Native American and Native American language has the same meaning given those terms in Section 103 of the Native American Language Act of 1990".

MR. ROONEY: So sorry, your point, Leslie, then, if we just used that, say "Native American and Native American language" -- I don't know how to conclude that definition. Would it be "and Native American students as defined in" -- and reference that law?

MS. HARPER: I think that does it.

MS. PODZIBA: So we will get that cleaned up and get the precision needed.

MR. PAYMENT: So, if it is already in the new language, all you have to reference is that section of the new language.

MS. PODZIBA: I think that's what they're proposing is to reference that section of
the ESSA.

MS. RIGLING: Eighty-one 0 one.

MS. PODZIBA: Any other comments on this issue?

Aaron, Derrick?

Ok, Aaron?

MR. PAYMENT: So on the issue of trying to come up with a percentage --

MS. PODZIBA: No, no, I want to hold off on that one.

MR. PAYMENT: Oh, ok. Oh, on the native language.

MS. PODZIBA: I just want to stick with this one.

Derrick.

MR. CHAU: I just had a clarifying question. Because, what they brought up around Native American languages makes me think of our dual emersion programs that we have in many of our schools, where students are not English learners, but their language of instruction is in another
language. And I know in those instances in those schools they have been requesting translated versions of the assessments, as well.

So, I'm not sure if that exists somewhere else in the regulations. It's just a clarifying question, because I don't know how that might be addressed, because it sounds like it overlaps with some of what they were talking about.

MR. ROONEY: Give us a second to look at the statute.

I think actually the Native language translations are for English learners who have been in schools for less than three years.

MS. POMPA: It falls under the accommodations.

MR. CHAU: I know that's not part of what this regulation is dealing with when it comes to English learners and assessment, but I was just clarifying, it did seem to overlap some of what they were talking about.
MR. ROONEY: Can we come back to that?

We will try to look at the statute.

MS. PODZIBA: Ok. The other proposal, there is a proposal to delete paragraph D. That's another proposal on the table.

And I'm just going to get people who haven't had a chance to speak.

Alvin.

MR. WILBANKS: I just have a question in reference to Page 3, under four. It gives four terms. There are three of them. One of them I'm sure of. I think I understand what that means. And the other three are "consider". Are those equal? They appear to be parallel. You've got to do all of those, or is the first one what the state has to do? Or what's the interpretation of this?

MR. ROONEY: So, A, B, C and D all come under romanette four.

MR. WILBANKS: Four.

MR. ROONEY: So the state at a minimum
must include A, B, C and D. So they must include
the most popular language. They must consider
languages other than as spoken by a distinct
population of English learners. They must
consider languages other than those spoken by a
portion of sitting LEAs. And they must consider
languages other than English spoken by at least
thirty percent.

So, I think actually that might have
been to Audrey's point, about "and" means that A,
B, C, and D all apply to romanette four.

MR. WILBANKS: How does that factor in
with the student, the English learner that comes
in for less than a year? They have three years
under accountability, but in terms of offering
them assessments in their language, how does this
play in?

MR. ROONEY: So, Alvin, your question
is about recently-arrived English learners. I
want to make sure we're not completing issues.

A different part of the statute says
that students who are recently arrived, they have been in schools in the United States for less than a year, have to take the math and science test if they're in a grade that gives science. And they can be exempt from one administration of the Reading Language Arts Test. That is a separate piece about whether states can have Native language assessments.

This provides a permission for states to have Native Language translations for students that they identify they need Native language translations for.

So I think, if the state we're looking at its population, they would include recently-arrived English learners as part of their determination of if they have a native language translation, or that they don't, or think they need one, which is what this section is trying to get at.

MR. WILBANKS: So four A, B, C, D, doesn't apply to the English learner that is
MR. ROONEY: It does. It applies to all students. It doesn't -- what do you mean by "temporary"?

A recently-arrived student could be exempt from that first administration of the Reading Language Arts Test, but the state could decide to assess that student, and if they had a native language translation, that student could take the native language translation.

MR. RUELAS: I was just kind of going along with what Leslie was saying and what you were talking about with regards to this area and area D, "consider the languages other than English".

I do think we should eliminate the numbers themselves, thirty percent or five thousand. That in itself will allow more flexibility at the state level.

MS. PODZIBA: So you're supporting the
proposal to delete D?

MR. RUELAS: Yes.

MS. PODZIBA: Ok. Let's hear from some others.

Rita?

MS. AHRENS: I'm concerned about the proposal to delete D entirely, because as I said, parents of English language learners, who are thought in the majority, you know, we have an obligation to ensure that the students are meaningfully participating in both instruction and assessments.

We have seen that there is inadequate instruction of our English language learners based on the graduation rates that we have across the nation. I'm concerned that, you know, we're not providing enough guidance that would lead to this more appropriate and meaningful participation of English language learners.

I think that, you know, for D, we're looking at a criteria that the state should
consider. It's not mandatory that they must
create a native-language instruction with these
thresholds. It's merely providing them Guidance
that will say, Hey, this is a threshold you should
consider because it's meaningful, right?

So the state doesn't have to create
that language assessment, and so I don't think
it's an undue burden to ask states to consider a
language that hits a certain threshold.

I would prefer to keep this in, because
the idea that, you know, we can look at the
district-level concentrations isn't sufficient,
because I don't want districts to have to lobby
the state to say, Hey, you know, our district has
a lot of people speaking a specific language.

It's a state responsibility to ensure,
you know, that all students within the state are
being able to participate in the state
assessments. So the state needs to provide and
identify which languages it's going to consider.

And this might be something for later,
but eventually I do want to hit another point on
the page, on Page 3.

MS. PODZIBA: Ok, let's see if we can
get more comments on this.

Tony?

MR. EVERS: Are you just talking about
D now?

MS. PODZIBA: Yes.

MR. EVERS: I'll pass.

MS. PODZIBA: Aaron.

MR. PAYMENT: So I think we found some
solution to the native language one.

But I'll hit on first, so it seems to
me like the solution is somewhere in either a
percentage or a number threshold in the district,
and that might seem burdensome, because when we
add thirty percent, that just leaves out more
people than it includes.

You know, I'm cognizant of the fact
because I watch national politics a lot, and who's

going to get elected, and I know you need thirty
percent of vote to get elected -- thirty percent
of the Latino vote to get elected president. But
there are many, many more people than Latinos in
the country, including the indigenous population.

So I don't know how appropriate it is
for us to number to pick, a percentage, based on
which population are we accommodating. So maybe
it's a percentage of -- because it has to be
reasonable, a percentage of the district.

So I think that would address your
concern. That would probably address our concern.
Then when we're ready I think we have some
proposed language on the native -- because we did
get feedback that "Alaska natives is essential" to
keeping us on target on that one.

MS. PODZIBA: Ok, so why don't you just
tell us that.

MR. PAYMENT: So Native American --

MS. KING: What your offer is.

MR. PAYMENT: "Native American as
defined in Section 103 of NALA, which includes
Native American, Alaska Native, Native Hawaiian or
Native American Pacific Islander languages".

That's the final two in those two.

So I think it is important because too

often we're the invisible minority. We're the
fraction of the fraction, and then unless it's
specifically stated and clear, even though I agree
with Leslie that it's reference in the previous
law and in the new law, I think it needs to be
made clear by including the language assessment.

MS. PODZIBA: Could you pass that up
this way and we'll get it typed in.

Does anyone have a problem with what
Aaron read out?

So we can get that in there.

Kerri?

MS. BRIGGS: Not a problem, just want
to make sure it gets put in the right place.

This seemed like a really very nuanced
provision. Is there a more general place where
this is published for students and it first gets
referred, that would be the most appropriate place?

I think in probably flipping through the whole section of the reg -- I was flipping through and trying to see if there is a better focus.

MS. PODZIBA: How about for the time being we put here, and as we go through the package, if there's a better place to put it, we can do that.

So we're still on paragraph D. There are multiple proposals. There are proposals to strike it. There is a proposal to add five thousand. There's a proposal to incorporate it somehow in C. We're still talking about that.

Liz?

MS. KING: I just wanted to reinforce what Rita said and sort of say that I think we see this as an opportunity to help states, districts and schools meet their nondiscrimination responsibilities under Title VI.
1 The hope, and I realize certainly the
tension here, the hope would be that this would
encourage the availability of more native language
assessments, so that more children for whom this
is the appropriate accommodation would have access
to that accommodation.

I heard a concern that this would
reduce the availability of native language
assessments and would like to have more of an
explanation for that, and just also to remember
and remind us all again that this is about
providing accommodations that a child is entitled
to so that they have access to the content in the
school.

MS. PODZIBA: Delia.

MS. POMPA: I would like to remind us
that the Department responded to our conversation
last time that we wanted criteria.

As you all recall, this provision has
been in place for many, many, many years, and the
states have not taken advantage of it. And this I
1 think is what we asked the Department for. It's
criteria. It doesn't say states have to do it.
It gives them some specific criteria for how they
should consider whether they should be
establishing these tests. It gives them
something -- guide posts to consider it.

So I am happy with this language. I am
happy with leaving D as it is and leaving it in
place.

As a reminder that this is a way to
move districts -- excuse me, not districts,
states. This is a state responsibility, not a
district responsibility. So we should accept this
as what it is. It's not a mandate to anybody. It
is a reminder of their responsibility, the state's
responsibility to children to have the appropriate
accommodations.

MS. PODZIBA: Marcus?

MR. CHEEKS: So, one of the fears that
I have is, working with school districts on
continuous bases, a lot of times they're looking
for the minimum threshold, and they stop at that threshold and take no action below it.

So, adding numbers to quantify a number of languages will I think inadvertently cause districts to not deal with the one child that has the language that's not English.

So, I think the proposal to remove D has been placed there, specifically if we're going to tie numbers in the tune of specifics where five thousand, ten percent, because at some point in time, particularly in smaller states, those numbers would fall below that and no action would be taken.

So I think the preceding elements, you know, really point states to how they can address who those significant populations are, with giving still the same room to not leave the one, two, three smaller numbers of children on an island by themselves, and where no action is taken at all.

MS. PODZIBA: Ryan?
MR. RUELAS: Sorry, no.

MS. PODZIBA: Did you want to comment, Lynn?

MS. GOSS: I was just going to support taking the numbers out of letter D, as well, if not striking it all together.

MS. PODZIBA: Kay?

MS. RIGLING: I just want to reenforce what Delia said about what we're actually looking at in this particular section.

It has nothing to do with an LEA's responsibility to appropriately serve all of its English learners with all of the instruction and supports that they're entitled to.

This is a specific provision about a state requirement to receive Title I funds, to provide a statewide assessment system.

In this particular case, in addition to making sure that that system has appropriate accommodations for English learners, this is a specific provision about looking at the languages...
that exist in the population of the states and, as
this criterion talks about also, significant
portions within the state, and to determine
whether the state has made its best effort to
provide native language assessments with respect
to those populations.

So it's a pretty narrow, in a way,
requirement. It's limited to state assessment
systems and within that native language
assessments.

So it's not going as far as some of the
discussion about how we assess English learners in
their native language, maybe at the district
level, or what instruction and what services we
need to provide them in order to meet the civil
rights requirements.

MS. PODZIBA: Ok.

Would there be dissent from deleting
paragraph D?

MS. AHRENS: Yes.

MS. PODZIBA: Ok, I'm just asking the
question.

Would be there dissent from leaving paragraph D in and adding the five thousand student component? Would there be dissent from that?

MS. GOSS: Yes.

MS. PODZIBA: Ok. Would there be dissent from leaving the paragraph in as written?

Yes?

Ok, so let's just mark this as outstanding. I think we've had a full discussion of it, and we'll keep going.

Patrick, could you take us through the next section of this.

MR. ROONEY: I think Rich has a comment he wanted to make.

MS. BRIGGS: Are we moving off this issue paper?

MS. PODZIBA: No, we're moving further into it. Just off D.

MR. POHLMAN: Very good. I thought you
were moving off the issue paper.

One other thing I wanted to say, mine

is actually quick --

MS. PODZIBA: Wait, are you going to
talk about something else in the issue paper?

MR. POHLMAN: Yup.

MS. PODZIBA: Alright, so I'm going to
ask Patrick to present it first, and then we'll
open it up for discussion.

MR. EVERS: Are we leaving this one?

MS. PODZIBA: We're leaving D. We're
leaving paragraph D.

MR. POHLMAN: My issue is actually on
Page 2.

MS. PODZIBA: Patrick, maybe take us
through the rest of the paper and we'll open up
discussion by page.

MR. ROONEY: That's great. I was
actually going to flag for everyone that I wasn't
planning to walk through the rest of what's here
in Issue Paper 5A, because the rest of the
language is essentially just making technical changes to what is in the existing regulations where we added in new statutory citations.

I don't know that it's worth walking through. I'm happy to answer questions if people have them, but there is nothing in particular that I wanted to flag and to discuss with this group.

So I'm happy to go back at any point.

MS. PODZIBA: So the whole paper is open for discussion. New issues.

Richard, Page 2.

MR. POHLMAN: Sure. I am just wondering if there's a space in Guidance, under F(b) there, "to the extent practicable".

When you talk about mastery of skills, one thing we mentioned before was the use of growth, increasing use of growth against academic content areas, and if there's an option within Guidance to at least go back and emphasize that states should also be considering measures of growth as well as mastery of skills, as far as
proficiency and growth.

But I don't know, maybe I'm missing something, but...

MS. PODZIBA: Ok. New issue, Rita?

MS. AHRENS: On Page 3, it is I guess in red, under number three, "As applicable an explanation the reason the state has not been able to complete the development of such assessments despite making every effort..." I would like to add to that a timeline for when the state will address the outstanding issues with the development of such assessments.

MS. PODZIBA: Could you repeat that proposal?

MS. AHRENS: Sure. It's in number three. It's just adding a timeline for addressing the -- a timeline or strategy for addressing the lack of those assessments.

MR. ROONEY: And Rita I think, if you read, so one, two and three fit together. So you look right above it. And number one is the
state's plan and timeline. And then number two is the description of the process together input. And then the three is the explanation provided.

They can't do it if they say, or -- you know, for whatever reason they cannot develop assessments in those languages that they are present to a significant extent, as defined by the state, then the state has to describe the reason for that.

But --

MS. AHRENS: Yeah, I wasn't sure if number one, because it's the same -- because it was number one applied to number three. So I wanted that clarity.

MR. ROONEY: Well, I think the way we wrote this would be, for your proposal, for your discussion would be, first the state identifies the languages that are present for which languages translated tests are not available. And then they have to develop -- they have to describe the plan and timeline for developing those assessments that
they have identified and the description for how they're going to gather input on that. And in the case that they cannot, they're unable to complete develop of such assessments, despite making every effort, I think that would be their answer. They wouldn't have a plan and timeline for doing it, because they would say "we're unable to," and "here's the efforts we made and here's why we cannot do it".

MS. AHRENS: Can we then amend it to say that the state will provide a strategy for how they will appropriately accommodate those students, which, if they're not being given those assessments, there has to be some sort of strategy to address those students' needs in terms of assessment accommodations.

MS. PODZIBA: Patrick?

MR. ROONEY: I think we'd love to hear more discussion on that proposal.

MS. PODZIBA: So it would be -- is that to add a four, let's say, a strategy for
accommodating those students?

MS AHRENS: Right. Because if I'm understanding what Patrick a saying, the state identifies the assessments that they are going to develop, and then they define or explain why they can't for certain languages, but I'm concerned about what we do for the students in those languages that we cannot develop native language assessments for.

Because obviously they need a native language assessment, but you can't develop it because there are, you know -- you just can't for whatever reason make the test valid or reliable, we have to provide other accommodations for the students whether they're taking their assessments.

MR. ROONEY: I mean, we could open to discuss this. It seems like that would fit better under number three as opposed to adding a separate number four; that, if the state provides its explanation in three, then the state would provide their strategy for how they're going to make the
test accessible.

I think, kind of our thinking behind number three is that we know some states have state law that precludes them making a native language translation of an assessment, and that wouldn't be a question about the size of the population that needs the assessment. It's a different kind of barrier the state has. I don't know that we can suppose now what those potential barriers might be in order to put it in a regulation, or what those barriers might be in six months, let alone in five or fifteen years from now.

So I think we're trying to leave it with clear expectations, but not necessarily be overly prescriptive.

So I'd love to hear more discussion on that.

MS. PODZIBA: Ok. Discussion on this proposal.

Marcus?
MR. CHEEKS: So I respect wholeheartedly Rita's proposal, but I think it almost contradicts what we're asking to have happen in the preceding conversation with item D. We don't address the smallest minutia group, but then in explaining how the states aren't able to actually provide assessments beyond making every effort, we now will explain that, in the preceding section.

It's almost as if we're letting the state off the hook in one area but making them explain it in another area, and I think it's inconsistent to the point.

So, somehow they should align. If the "every effort" piece is what's being addressed here, then we definitely wouldn't want to go and drill down after making every effort to then say, what about -- or not say what about those that were a lot less -- fall below that threshold.

I hope I'm saying that correctly. I think we're -- I guess my whole point is I think
it would be inconsistent in the actions between sections E and 4D.

MS. PODZIBA: Delia?

MS. POMPA: My concern about having an explanation of what the state is going to do if they don't have a native language assessment is it limits it just to that section. And native languages are just one form of accommodations. There are other forms of accommodations that states should be using.

So if I were going to say that the state would have to explain, Why haven't you created an accommodation, I would make it apply to all the accommodations, not just native language.

MS. PODZIBA: So it sounds like there's not support for that proposal.

Thomas, was that on this proposal?

MR. AHART: It was a little broader than that.

MS. PODZIBA: So just hang on.

Tony, do you have new issues?
MR. EVERS: I have new issues, but I
wanted to get this one done.

MS. PODZIBA: We have new issues.

MR. EVERS: This is a very small thing
on Page 2, and then I'll leave Page 2. And this
is actually in -- it's in section B. It talks
about students who are achieving proficiency in
the English language arts and mathematics.

English language arts actually has four
areas. One is listening. I'm concerned that deaf
children, hard of hearing children, will have
trouble reading that.

I mean, there's no -- it's just
inconsistent, and it's a small group of kids, but
I just wanted to flag that.

MS. PODZIBA: Can you just let us know
where you are. Some of us can't find it.

MR. EVERS: Its B, big B on Page 2,
where it says "to the extent practicable,"
da-da-da, "and until students have achieved
English language proficiency." English language
proficiency includes listening. I'm just telling you that deaf and hard of hearing children are going to have trouble with that content area.

I don't know what you do about it, but I'm just telling you. That's a fact.

MS. PODZIBA: Ok, are you proposing --

MR. EVERS: I have no proposal.

MS. PODZIBA: Ok.

MR. EVERS: But it's those children who will have trouble in proficiency in listening.

MS. PODZIBA: Regina?

MR. EVERS: I have others.

MS. PODZIBA: Ok. She's going to respond to that.

MS. GOINGS: Just another comment to that. As an accommodation during testing for deaf and hard of hearing children, are interpreters available to assist in that area?

MR. EVERS: I'm just saying that it's going to be difficult for them.

Well, my question is, and Kay brought
it up about determining whether states are actually doing something here. So I've given that kind of a mantra, which I understand, and maybe we talked about it before, and if not I'm sorry for bringing it up: What does the word "consider" mean, especially when we're talking about the federal government determining whether Wisconsin is doing what they need to do?

So, can we talk about that a little bit? I don't know whether anyone has the answer, but I'd like to hear about it.

MS. PODZIBA: Kay, I think that's a question for you. What is "consider"? How do states know they consider?

MS. RIGLING: I was under the impression that this was something the state would include in their state plan for how they considered it, so that there would actually need to be some discussion of what they took into consideration.

MR. EVERS: So maybe "describe" might
MR. ROONEY: "Describe how it considered"? Would that --

MR. EVERS: I kind of like describe, period.

MS. RIGLING: I mean I think, to the earlier point, these were meant to be criteria for a state to take into consideration to inform its judgment about what languages it needs native language assessments for, and the -- how it made its, I think the language is "best effort" to develop native language assessments in those languages.

So that's really what these were about, I guess to prod the state's thinking. And if there is a description, it would be a description of you know, what they looked at when they made the determination that they didn't need any native language, or they needed native languages in Spanish and Russian, or Eubic.

I think it really was meant to be
"consider," but it would be a consideration that would be part of the larger decision as to whether native language assessments were needed and why not and the efforts that the state had made in order to develop them when the state determined that they were needed.

MS. PODZIBA: Tony, does that make you any more comfortable?

MR. EVERS: I think I would prefer a response that's consistent with most of the others sections.

MR. ROONEY: Tony, could I ask, I think just changing "consider" to "describe"? Does that work? "Describe languages that are spoken" --

In other words, they're describing the languages. They're not describing how they're considering.

MR. EVERS: "Describing how." There needs to be something after it. I'm sure there needs to be another word.

MS. RIGLING: I think there's already
a requirement in romanette 2D to indicate, "languages other than English that are present to a significant extent for which yearly student academics assessments are not available and are needed".

So it seems like that's where the description comes in, and then describe how the state will make every effort to develop the assessments that are needed.

So, this is really sort of to help the state in thinking through the description that it would make --

MR. ROONEY: This is the definition for how they're defining languages "present to a significant extent".

MS. RIGLING: Right.

MR. EVERS: And D, for what you just said, could really replace everything in four.

So I'm not sure how this -- the extent of the description that were the inclusion of four, A, B, C, D, helps to describe what's
actually required in the law.

MR. ROONEY: I think the distinction in D is that in D the state has to identify the languages that are present, but it doesn't tell you how you have to define languages that are present to a significant extent.

And it's not 'till Roman numeral IV after that that we then say, the state has the discretion to define that term and you have to include these four criteria.

MR. EVERS: I just caution people about overregulating here. English learning proficiency is now included in the accountability system, so it's not as if there isn't already a good plan to increase proficiency.

MS. PODZIBA: Thomas?

MR. AHART: I'm kind of coming back to some of these same terms that we're finding problematic, "consider," being one of those terms. And what I keep coming back to is, if I trace through on Page 2 and 3 the non-red print, I can't
tell if that' blue or black, that seems pretty clear, and it seems like most of the red that includes a lot of that language kind of smells like guidance to me.

Then it becomes much easier to stomach a term like "consider," or that kind of language, but it's actually not in code, and you don't feel this, Don't get me if I didn't talk about this at enough meetings, or, you know, whatever the case may be. And I think that the general consensus is it seems that nobody knows how you proved that is also more evidence that perhaps it's better included in Guidance than an actual code or actual regs.

MS. PODZIBA: Alvin?
MR. WILBANKS: He said it. I was going to suggest that we put it in Guidance or leave it in the regulations.

MS. PODZIBA: Audrey.
MS. JACKSON: I have two clarifying questions. One is what is the interim in which
this is being done? Is this a yearly basis?

This is not my area of expertise. Is it being submitted once, or every year, the state plan? Is that yearly?

MS. RIGLING: It is not yearly.

MS. JACKSON: No? What is the interval?

MR. ROONEY: States have to submit their plan at the beginning of the law taking effect. So at some point in the not-too-distant future states have to submit the plan for how they're going to comply with all the requirements in the new statute.

Then states may update their plan annually or the Department may ask them at some interval period of time, and it may be determined based on different pieces of the statute requirements. But all states will have to submit a plan in order to receive federal funds at the beginning of the implementation of the law.

MS. JACKSON: Ok. And again, it's not
my area of expertise, but that reauthorizations
don't always seem to happen exactly as expected,
if there could be some consideration for if there
are large fluxes in population how states might
consider that.
I know from the time that I've left
Vermont where I grew up to when I go back now it's
a very different part, at least to me, a different
population. So things can flux, sometimes quickly
depending on global dynamics.
And second, and this is another
question, just about the assessments that we're
referring to, I believe since this is always in
200.6, it's clear that these are the annual
academic assessments for accountability? That's
like sufficiently just assumed for everything,
right?
So, then even if you're making these
requirements for all the languages, those are only
for academic accountability assessments, not
necessarily for other interim assessments.
MR. ROONEY: Yes. So, to your point, it is about the -- this section of 200.6 F is about the academic assessments. There is another part, which we'll talk about, Issue Paper Part B, on the English language proficiency tests, that also ends up being in 200.6.

But if you look at the very next line, on Page 2, all of this comes under this header for F where "a state must include English learners in its academic assessments as follows." So all of the text below is all around the reading language arts, math, and science state assessment system.

MS. JACKSON: For me, I'm just a teacher, and I'm sure there are lots of teachers just relaxing and reading this, but the academic assessments, that's within -- the assumption is that those are for accountability? Right?

I mean, I know you're saying that clearly, but is that clearly made out previously?

MR. ROONEY: Yes and no. Elsewhere in the statute they lay out the assessments that are
used in the accountability system. Why I'm hedging is because the reading language arts and math assessments are included in the accountability system. Science is also an academic assessment that states need to have once in elementary, once in middle and high school. That's not required to be part of the state's accountability system. States can make it part of their accountability system.

MS. RIGLING: What if we, in the very first line in F, "must include English learners in its academic assessments under Section 200.2"? Because I think that's what we're talking about here.

MS. PODZIBA: And you have it in general. So do you need it in both places, Kay?

MS. RIGLING: No.

MS. PODZIBA: So if it's in there in general -- is it there?

MS. RIGLING: We probably don't need it. We probably don't need to add it, you're
right.

MS. PODZIBA: Liz?

MS. KING: Yeah, I think you do need it.

So, Audrey, if you look at 200.2,

there's a statutory reference. So 200.2B, "the assessment required under this section must except as provided" -- blah blah blah, blah, blah, "be administered to all students".

So this is like -- there are two different things happening in 200.2, right? One is these assessments are those assessments required under the statute, and then there is the part to 200.2 that are about the process for approval, like validity and reliability and peer review.

So I just want to make sure that we're covering both of them. We don't have to make that decision now. But I understand -- so consistent with 200.2, my interpretation, hope, intention, and expectation is that that's a reference to the
validity and reliability requirements, and that in F, it is those assessments which are required by the law for the accountability purposes.

To your point, you can do other things in the accountability, but I think that those two different 200.2 references are serving two different purposes, so I don't know if you need an additional letter under that, or how else to do that. But that was just the point I wanted to make.

MS. PODZIBA: Thank you.

Rita.

MS. AHRENS: I just want to make a quick comment to really push back against this idea that keeps cropping up that we may be overregulating.

I think our job here is to really clarify the statute, and what I'm hearing from parents that I'm speaking to is that there is a lot of confusion around definitions, especially when it comes to English language learners, or
students with disabilities who are English language learners, as well. There needs to be regulations that really clarifies these guidelines the states. Because parents don't necessarily know, you know, where to look for in Guidance. It's much easier to look in regulations to see what is legally required of the state. Because Guidance is not binding.

So I think, from a parent perspective, we want to clarify where we can definitions or criteria that would make it helpful to see if, you know, if parents need to advocate more strongly with the state or the district for their students.

MS. PODZIBA: So I'm hearing proposals to take it out. I'm hearing proposals to leave it in. So I'm guessing that taking it out -- there's not going to be consensus to put it in Guidance either.

So I think where we are then is needing to polish it up so that it becomes something that everyone can live with.
1 I am cognizant of the time, and it's
2 probably a good time for lunch. I just want to
3 ask a question.
4 Are there other issues on this issue
5 paper we have -- ok, so when we come back after
6 lunch, we'll continue with this issue paper. It's
7 a quarter of, so let's reconvene at 1:45, and
8 Patrick, before we break --
9 MR. ROONEY: Just one reminder. The
10 cafeteria, if you go that way down the building,
11 it's available. You can also leave the building
12 and there's food trucks and there's restaurants
13 outside the building.
14 There is a room for negotiators if you
15 would like to convene separately or just to get a
16 break and sit quietly and e-mail in the Training
17 Center in 1W112, which is if you go out both doors
18 and go straight back and through the glass doors
19 and around, you'll find it.
20 (Whereupon at 12:47 p.m. a luncheon
21 recess was taken.)
AFTERNOON SESSION

(Whereupon at 1:48 p.m. the meeting resumed.)

MS. PODZIBA: Please take your seats and we'll reconvene.

Alright, I think most of us are here, and we will pick up where we left off.

So, again, just a reminder. There is a public comment sign-in sheet. If anybody intends to address the Committee at the end of the day, please sign up. The public comment sign-in sheet is on a table right near at the far exit door.

So as we left, there was a proposal on the table that I wanted to see if people were ok with the proposal. It was Tony's proposal to change "consider" to "describe how" in B and C.

Are there any concerns about making that change?

So, in B and C, "consider" would change to "describe how".

Is everyone ok with that?
Yes, Richard?

MR. POHLMAN: Describe how what? I think that it's missing a word, if you just simply use "describe how". I think "describe how it considers," I don't know. But reading it, "Describe how languages other than English that are spoken by districts, populations of English learners, including English learners who are migratory, English learners who were not born in the United States and English learners who aren't Native Americans" --

MR. EVERS: There's no verb.

MR. POHLMAN: Of all the points, I missed the verb.

MS. PODZIBA: Tony, did you want to revise that proposal?

MS. RIGLING: Would it help to first go back to the lead-in language to see what these verbs are modifying? I'm looking at romanette iv, "in determining," that language.

MS. PODZIBA: Ok, can you take us
through that?

MS. RIGLING: Well, it says "In determining which languages other than English are present to a significant extent in a state's participating student population, a state must, at minimum"... and then we list the four things...

"Ensure that its definition of the languages that are present to a significant extent encompasses at least the most populous language".

And then what we had proposed was,

"Consider languages that are spoken by distinct populations," and we list some, who aren't probably the most populous language, but are other significant populations of non English speakers.

And then C was, "Consider languages other than English that are spoken by a significant portion of," maybe in one or more of the LEAs.

So, again, trying to get at concentrations of non-English languages that again maybe don't rise to the level of the most populous...
language in the state.
And those were all meant to be sort of triggers for what a state might go through in determining the languages that are present in those states, to a significant extent.
It's sort of like, kind of criteria considerations for what you might think about for what does a "significant extent" mean in the context of your state.
And trying to also get states to think about more than just Spanish, more than just the primary language or the language that's most populace in the state.

MS. PODZIBA: And so, Kay, does the "describe how" -- how do you process "describe how" versus "consider"?
Because if I hear you correctly,
there's not a language problem, because the verb is actually above.

MS. RIGLING: But I think the "describe how" doesn't fit with the rest of the
language in that paragraph.

I think, to Richard's point, we need to say describe how the languages do what.

MS. PODZIBA: And your sense is that "consider" doesn't create that problem?

MS. RIGLING: Right. Because I think -- because the "consider" goes with "A state must consider in determining which languages other than English are present to a significant extent".

MS. PODZIBA: Ok.

MS. RIGLING: And then above they have to describe sort of --

MS. PODZIBA: Ok, I don't want to spend a whole lot of time on "describe how" or "consider," so if it's problematic...

Tony?

MR. EVERS: I'll surrender. I'll surrender in the context of, I believe all the new language is a problem as it relates to Congressional intent and overregulation.

So it's not that I'm agreeing with
"consider". I just don't think it's a time --
it's worth the time to mess with it.

MS. PODZIBA: Ok. Aaron?

MR. PAYMENT: So I would just say that
we probably wouldn't have spent as much time if we
would have read it contextually, because I think
we were reading it out of content.

So I also agree that "consider" is
proper. I think it shouldn't be alarming for
states, because "consider" is not a specific thing
that they have to do. And we would like them to
consider it. And I think it will be then left to
the politics and the local whatever to figure out
what consider means, and that's a good thing.
That's local.

MS. PODZIBA: Ok. I'd like to
entertain new issues on Issue 5A. Are there new
issues?

Ron?

MR. HAGER: I'm sorry, this actually
came up just before lunch. We're going backwards
here, but it did come up just before lunch, so I wanted to come back to it.

It's on Page 2. It's in the blue (f)(1), romanette (1), capital B, and you have it in blue. It's in the Academic Content area. I didn't know where that language came from, because, you know, typically it's aligned with the states. It's just a different phrase than we see elsewhere in the ESSA. It's just a little bit different phrasing than we've been using.

So it's on Page 2, in that capital B, that blue, "Determine the student's mastery of skills and academic content areas," where typically it's more like "that are aligned with the state's challenging academic standards," which I think is the language you use, like for example in 200.2, that the assessments are to be aligned with the challenging academic content standards. So I don't know if there was a reason why you had that different phrase there.

MR. ROONEY: So this is from the 

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statute. If you look at the tab Relevant Statute, if you look on Page 25, and at the bottom of that page there is Roman numeral III. I'll let people get to that part.

Sorry, it's under the tab Relevant Statute, with the assessments, the second page on that Page 25, Roman numeral III at the bottom says, "The inclusion of English learners who shall be assessed in a valid and reliable manner and provided appropriate accommodations on assessments administered to such students."

Next paragraph, "Including to the extent practicable assessments in a language and form most likely to yield accurate data on the what the students know and can do in academic content areas, until such students have achieved English language proficiency".

MR. HAGER: Ok.

MS. PODZIBA: Leslie?

MS. HARPER: New issue.

MS. PODZIBA: Yes. Is your mic on?
MS. HARPER: Yes, it is.

Looking at Page 20 of the red-line version, it's the top of the page, Line 16. So, that's in paragraph two, assessing reading language arts and English. Line 16 gives the Puerto Rico exclusion and I would like to insert in there as well, "excluding Native American language medium schools in Puerto Rico for three or more consecutive years," da-da-da-da-da. So talking about assessing reading and language arts and English.

MS. PODZIBA: "Native American language medium schools". Is that correct?

MS. AHRENS: Or students in -- yeah, Native American language medium schools, "and."

MR. PAYMENT: Yeah, "and" because otherwise it's really limited.

MS. RIGLING: Definitely not in Puerto Rico.

MR. PAYMENT: Native language students that live in Puerto Rico?
MR. CHAU: Actually, this gets to the question that I asked earlier about schools that teach in a language other than English.

MS. HARPER: Well, I will justify this, because again if we go back to NALA, and go back to Title III, Section 31.27, describes specifically Native American languages and Puerto Rico, and those are the only two that are described in the statute in this language. Native American languages and Puerto Rico are described in Section 31.27.

MS. PODZIBA: Patrick --

MS. HARPER: So, we would like to be afforded the same rights and the same considerations as Puerto Rico. It would make sense to align that piece with this. It doesn't make sense to only allow the exclusions for Puerto Rico and not for Native American language students. It's very specific in there.

I can pull it up and put it up there if you need to.
MS. RIGLING: Can we just provide a base. Again, this whole section, this whole section of regs applies to state assessment systems, and the reason it does is because it's a requirement if a state wants to receive funds under Title I. If it doesn't want Title I funds, there's absolutely no requirement.

Title I funds go to states, the District of Columbia, and Puerto Rico. So Congress has specifically written in this exception for Puerto Rico because they instruct in a language other than English.

So what Puerto Rico has to do with respect to meeting the assessment requirements in Title I is to develop an assessment system in Spanish that meets the requirements of the law, essentially what are in 200.2, that we're deliberating on.

So that assessment system has to come to the Department through peer review and meet all of the technical quality, validity, reliability
requirements that a state's assessment system in English must meet.

So it's not that they're excluded from assessments. They're excluded from the assessments in English. And instead they're being assessed through a valid and reliable assessment that has gone through peer review.

I honestly can't say that we have the authority to make this addition because it's -- it would be -- it would have to be in the context of either the state's assessment system or the Bureau of Indiana Education's assessment system, which BIE also receives funds under Title I and needs to meet the requirements of Title I. With respect to assessments, BIE does that through requiring BIE schools to use the assessments of the state in which they're located.

That's an assessment BIE made through regulations. It's probably going to reconsider that decision under ESSA, but BIE has that prerogative to do that.
So, in this context, if we could make this change, it would be within — it would have to come in through a state's assessment system, be peer reviewed, and the assessments for the language medium schools would need to first be acceptable by the state and second would need to pass peer review. They would have to be measuring the content, the state's content standards and be comparable to the state's achievement standards.

So I just want to frame that context for the discussion.

MS. HARPER: Thank you, Kay. That's exactly what we're talking about in this section here. And I guess the question then becomes under what authority is Puerto Rico given that exception?

You have described that it is in the state's accountability system. That's the same thing we're talking about for native language medium schools that exist.

Puerto Rico was given the same right as
a state throughout this whole education law. It's not any special right because it's a territory. They've proven that. They are written in as a state.

And in Section 31.27, "Programs for Native Americans or Puerto Rico, notwithstanding any other provision of this part, programs authorized under this part that serve Native American children and children in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, evaluation assessment designed for Native American children learning and studying Native American languages and children of limited Spanish proficiency, except that the outcome is increased English proficiency," right? Right.

I mean, we're talking about that, but there's this whole thing. If you look at Puerto Rico's assessment workbook, they've got the whole thing worked out, and it's complex, and it boggles the mind of all of these votes. But they have
limited Spanish proficiency in Puerto Rico.

Now this is the same authorization and this is the same recognition given to students studying Native American languages.

So what we're asking for, what we're suggesting is equal consideration as Puerto Rico for our students in native language medium programs. Now remember that definition of native language medium schools is students who are attending a school in which academic content is presented in the medium of a native American language for fifty percent or more of the data.

Again, it makes sense to track down the proof and to do the assessments in the language of instruction. We're not trying to get out of any assessments. Our schools, our tribes, our Alaska native communities, our Hawaii native communities, again are all very good educators. We are describing programs of instruction that necessarily include assessment progress, assessment schedules, assessment design.
We very well have tribal priorities that are prioritizing valid and reliable assessment schedules and talking about how we meet these schedules of bilingualism and English-language proficiency down the road. But also this is our right to educate our students in our language of instruction.

And I'm not just talking about the IDEA schools either. That's a tiny, tiny little percentage of our students.

MR. PAYMENT: Eight percent.

MS. HARPER: Eight percent of our students attend IDEA schools. The rest of our kids are in public schools and working with our states and working with our tribal education department to put these plans together.

So, what we're asking about is, you know, including that in here. It comes from the same base of legislation and it doesn't make sense to exclude native language medium schools if that right is granted to Puerto Rico.
MS. RIGLING: And again, I think the reason it's granted to Puerto Rico is because Puerto Rico is a grantee of the Department under Title I. We give them Title I funds in exchange for their commitment to meet all of the Title I requirements.

Congress wrote in this exception because their native -- their language of instruction is obviously Spanish and not English.

With respect to Native American language medium schools, it's my understanding that the language that you're referring to in 31.27 is -- it's definitely actually, absolutely as you described, but it's with respect to a discretionary grant program that is funded under Title III.

So, it certainly I think does give credence to the fact that Congress, at least in that program, recognized that there were Native American language programs and Spanish language programs in Puerto Rico, and coupled them
The situation we have to deal with, though, is the fact that under Title I, it's the states and Puerto Rico and the District of Columbia that receive Title I money. So the states are the ones that have to comply.

And so what we need to be I think cognizant of is what requirements we're putting on the state with respect to assessing native language medium schools in their language of instruction and whether that is part of the requirement of the state to essentially use the same assessments to assess all students.

MS. HARPER: In Puerto Rico, however, there are two official languages of the state, but they don't provide it in English. They only provide it in Spanish.

So, you know, if we're talking about state's rights and state's responsibilities for assessing students, you know, ultimately they would have an opportunity to be assessing their
students in English, but they're not.

Their work is solely on Spanish and limited Spanish proficiency needs and Spanish interventions, and it leads over into the other section, you know, that we talk about with the language proficiency assessments.

So, it's weak, you know. It's thin ice, like the ice on the lakes at home in Minnesota right now, you know, moving into spring. It's a thin line there, and we just request for that same right for our native language medium students.

If Puerto Rico is given this right and this exception, that is something that makes a lot of sense to me.

And again I recognize in the Native American Languages Act, nothing should be construed to limit the use of native languages, in the rules of construction. Nothing in the civil rights section should not, you know -- what's the word? I can't find my words.
Yeah, with the civil rights tribes to be instructing through their native languages, you know.

MS. RIGLING: Maybe what we can do to move on is have Judy bubble that and put in the margin that, you know, we need to consider I think legally whether we can add this. And then what we'd have to do, if we can, is to decide how we would do it, because again, it would have to be the state that would be doing these assessments, and they would have to be peer reviewed and meet all the requirements of the statute.

MS. PODZIBA: So does that mean, Kay, you'll look into the legal questions about that?

MS. RIGLING: We will look into that, yes.

MS. PODZIBA: On this issue, Aaron?

MR. PAYMENT: So, alright, I'm just going to address the concept. So what we're talking about is really the same thing as Puerto...
Rico. And it can't make sense for Puerto Rico and not make sense for the indigenous people of this nation.

And so, you know, the practice of assimilation was -- I mean, the Bureau of Indian Education, which back then was the Department of War, their motto was -- the first superintendent of Indian education, his motto was, "Kill the Indian, save the child."

The federal government had a very active role in assimilation and stripping our language and culture from us. There isn't anybody else in this country that can say that.

So there are the provisions that exist in Esther Martinez, the Native American Languages Act that are specific to providing an environment where we can do emersion schools, and and then we do the instruction in our language.

So to say then that we provide an exception for Puerto Rico, when the articulation of how they would do the assessment can't be done,
and then we test them in English -- or don't test them in English, but that same standard can apply to the indigenous people who are trying to revive their language in our school systems, that same provision can't apply to them.

First of all, if that needs to be corrected, we will get legislation to do that. Second of all, I think it is in the language. I do believe it's provided in there.

And I just wanted one final comment.

The BIE serves eight percent of the population. We are often in the Department of Education. That's why we pushed for and we have a consultation policy for the Department of Education. We are the invisible minority, and ninety-two percent of our people, we have the worse graduation rate of any racial ethnic population. There isn't anything specific or targeted to change that or improve that. There's a White House initiative right now.

So when we talk about how do we make
the substantive change, reviving our culture and
undoing what the federal government did is the way
to get to that.

So, for saying why is there a carveout
for Puerto Ricans, and then we ask, why is there a
 carveout for American Indians, it is the same
principal, the exact same principal.

And we agree with the stringent attempt
of the states to do the assessments, but the
reality of that situation is you've got three
hundred languages. Are state's going to be able
to -- in Michigan alone we have Chippewa, Ottawa
and Potowatomi, so they would have to do the
articulation for those three.

There are other Indian people that live
in Michigan. There are some states that have a
multitude of languages, so it might not even be
feasible for that to happen.

I think they should try to do that. We
welcome them to do it. But in the circumstance
that they can't figure it out, then there should
be an exception. So we shouldn't be treated any less than a foreign territory, you know, the indigenous people being put behind a foreign territory.

MS. RIGLING: Let me make one final comment. This isn't an exception, though, for not testing?

MR. PAYMENT: We understand that.

MS. HARPER: No, it's not.

MS. RIGLING: Ok. But I thought your point was it would be hard for Michigan, for example, to do assessments in even the three languages, let alone the other indigenous people in Michigan.

MR. PAYMENT: So my reference to that is that, to the circumstance where they can't do that, then we would do our own assessment.

We're not saying we want to be except from doing an assessment. We're saying we want to be exempt from doing an appropriate -- you used the term earlier "appropriate assessment". We
want to be exempt from being assessed inappropriately.

There's things, lots of things that are lost in the translation between -- although we have the same base language, between our language and English. There's huge differences.

So, if you are teaching Indian children in their native language, whether it's the Native American Languages Act, Esther Martinez, which the federal government, Congress, legislative intent is to do that, and then you try to assess them in a foreign language, then you're going to have problems. They're going to fail those assessments.

So, we're all about, and we're very good at bureaucracy and following federal guidelines. We're extremely good at that, because our funding is contingent on it. So we've learned to do that very, very well.

And we also are very conservative when it comes to our own education systems and making
sure that our kids can perform. And they're usually in academies of excellence. We don't have language emersion at my school, but our MEA scores, Michigan Education Assessment, we have double digits higher than the public schools. So when we do language and culture as part of the curriculum, we excel.

And so these -- their school is doing even more. They're doing a full scope of having them understand who they are as people through their language that cannot be translated into an instrument that then assesses their ability.

MS. PODZIBA: Rita, do you have a comment on this?

MS. AHRENS: I just wanted to clarify, is native Hawaiian considered a Native American language? Because I didn't know whether it needed to be explicit, as you're considering this, or native Hawaiians would be drawn out.

MS. HARPER: The term "Native American language" is specifically in here and recognizes
Alaska native and native Hawaiian languages. It encompasses those.

And this is definitely not -- very specifically Puerto Rico has systems of assessment in place. This is not an assessment dodge. They have an exception in one line, and in this right here, and they have workbooks and assessments.

MS. PODZIBA: Leslie, if we can give Kay a chance to go back and look at how the acts intersect with each other and then come back to this, I think that would be the way to go on this, if that's ok.

MS. AHRENS: Sure.

MS. PODZIBA: Additional issues on 4A. Kerri?

MS. BRIGGS: There's language under F, I don't know if it's capital or A, it's red, on Page 2, about "afford any benefit from such participation." And it's in a couple different
places in the issue papers, and I just didn't know what that meant. What does it mean?

MR. ROONEY: So it is in a couple different places and I alluded to it I think when I did the instruction.

MS. BRIGGS: No, you blew right past it.

MR. ROONEY: The intent with our proposed regulation, with the proposed language here is making sure that, if a student gets an accommodated form of the state's test, that doesn't preclude them from the benefit that's afforded to other students who get a non-accommodated form of the test.

MS. BRIGGS: For example, what's a benefit? I'm just having a hard time visualizing this.

MR. ROONEY: I think this might come up, and it's also in Issue Paper 4A where we talked about assessment for students with disabilities, and also in Issue Paper 3, where we
talked about the locally selected nationally-recognized.

So, an example would be, if there was a nationally-recognized test that provided accommodations that didn't result in a reportable score, that those students who are taking a form of the test that can be used for state accountability, but can't be used for the same purpose and used for other kids who take the test that don't use that accommodation, that that would be a concern.

I think the reason we're flagging this is we think that would be a concern under Title VI of the Civil Rights Act that clarified equal benefit to all students for the educational service.

MS. PODZIBA: Kerri, does that answer your question?

MS. BRIGGS: Yes.

MS. PODZIBA: Richard?

MR. POHLMAN: Do you envision that being
further clarified in Guidance, to get -- I had it underlined in several places, too. I thought I knew what you meant, and I imagine most people might also have ideas, but it's a less than -- I think what you're getting into. This is again a place where I think you could go into Guidance of what states can do. I don't think it if needs more clarification in the regulation.

MS. PODZIBA: Are there other new issues on 4A -- sorry, 5A? I just wanted to see if you were asleep.

MR. HAGER: This is a wakeup call.

MS. PODZIBA: Any other items on 5A.

MS. RICKER: I have a question.

MS. PODZIBA: Mary Cathryn.

MS. RICKER: On Page 5, almost to the end, last four lines, the word "attended" is struck out and "enrolled" is inserted, and so just curious if it was just a more modern word that's been used throughout, or if there are implications to "attended" versus "enrolled".
So I want clarification. Thank you,

MR. ROONEY: Our current regulations used the word "attended," and the statute, the ESSA, when it passed and included this language, they changed it to "has been enrolled in school in the United States". I think functionally we think those two terms are more or less interchangeable. I think as an operational definition they would probably be considered the same, but we wanted to use the language that was in the statute.

MS. RICKER: Thank you.

MS. PODZIBA: Sure.

So to summarize, I think, if my notes are correct, and please correct me if I'm wrong, the outstanding issues are essentially essentially Paragraph 4. Is A, B, and C acceptable as it? Is it just paragraph D?

I know there were proposals about Guidance, but I know those didn't get any traction. So, is the item there essentially
Paragraph 4D that's outstanding? And then the other item is with regard to Native American language medium schools. Those are the two outstanding items in 5A.

Is that correct?

So people have been asking what happened. So essentially what we're doing is we're going through the text, making the changes that people are comfortable with and identifying the difficult issues essentially.

Once we go through all of the red text, we will come back to those items. And what happens when they're isolated, it's easier to get a lot of focus on them. So that's what we'll be -- and the focus in the sense of, how do we reach consensus? How do we develop proposals that everybody can live with, given that everyone has heard the concerns and constraints that have been raised.

Tony?

MR. EVERS: Yeah, I understand that you
need to focus on individual items, but I still
kind of reserve the right to be concerned about
the entire overregulation. So that's an issue for
me.

MS. PODZIBA: Ok, and so is that on a
specific section or is that in total?

MR. EVERS: Well, I tried in several
ways to make it more palatable, but, you know, the
fact of the matter is, this is I think --
Congressional attempt is not necessarily being
followed here.

So I just need to wrap my head around
that, frankly. So I am a not prepared to say, if
you change this word or that word -- that's why I
backed off on the "consider" thing, because it's
much more than just "consider".

MS. PODZIBA: Ok, so I'm not asking for
tentative agreements at this point.

MR. EVERS: I know. Yeah, I was just
making the point that as we look at things in more
finite terms, we can't lose track of the concerns
some people might have of the entire issue.

    MS. PODZIBA: Ok, so I guess we're
going to have to think about how we're going to
manage that from a process point of view.

    What I don't want to have happen is we
kind of scrub everything and it's kind of ok, and
then there is a concern raised about, Well,
overall there's too much here.

    So, I don't know if I need you to flag
specific points that you can't live with.

    MR. EVERS: I could make all sorts of
proposals that I'm confident we will spend a
couple of hours on and at the end of the day they
won't be accepted.

    So I just think I'm flagging the fact
that dealing with the finite issues may not
resolve some of the concerns I have and I think
others have relative to the overregulation of
this.

    MS. PODZIBA: So I just need help here.

So what should we do?
I think our goal, if I understand the goal of the group, is good faith negotiations to reach consensus, right? I can't bring that. It's got to be what all of you are here to do.

So my question then becomes, how do we operate if it's not clear that the language that we're looking at may ultimately not be acceptable? I mean, I think we need to work through the packages to get them acceptable. So I don't know how else to do that but to walk through them and figure out what isn't acceptable as it appears on the page.

Aaron.

MR. PAYMENT: So I have a suggestion. I share some of those concerns because I do think that, while I'm an advocate, I also want to make sure that what we come up with is not something that's going going to veto or sabotage or -- and I know those around the terms of use around consensus.

So I think what we should do, process...
wise, is continue as we're doing it, and you note
your concerns as we do it, but then when we're
done, I do think it deserves to have a review back
through a lens of, Is this appropriate? Is it
overregulation? Is it not enough regulation?
And so, we give it that treatment, but
that way we can get through the substance of the
individual arguments and issues, and then we can
come back with basically that lens of, Have we
gone too far? Have we not gone far enough?
And then invariably what's going to
happen, is that in order for us to be done, in
other words, I don't know if we have to stay in
the room until we're done, or keep coming back to
DC until we're done, we have to find a way to get
to the final product.
I think enough of us -- I think we all
have the same ultimate motivation, or we wouldn't
have accepted this duty.
But I think that's the way to do it is
to process through everything and then come back
with the lens and the review of, Is this too far reaching? Is it not far enough? And that will be in and of itself a negotiation to a reg.

MS. PODZIBA: Janel.

MS. GEORGE: Yeah, I wanted to say, to Tony's point, I certainly understand some of the concern going through this, walking through this piecemeal, each issue.

For me the overarching issue about Title I is about equity and it's about serving some of our nation's most vulnerable students, and I don't think there's disagreement around the table at all about that, about the intent of Title I or about the goal of it.

I think unfortunately part of the process here is laboring through these provisions. I would rather not have had such a long conversation about eighth-grade optional exceptions to the assessment.

You know, I have my concerns. I have larger concerns about how we drive equity, but
it's an important component of equity, and I think walking through this process is how we arrive at that goal of really granting equity for all children.

And I think that if we're in a place where that might not happen through this process and we do have to be honest and transparent with ourselves about that, and about whether this is a worthy exercise -- I do think it is, and I'm not trying to sway you one way or another -- but I just think that the process is what it is and we do have to walk through it piecemeal. And again, if we keep that goal in mind about what the purpose and intent of this law is, what children are actually being impacted most by this law.

And I have to be honest. The children that are impacted look a lot more like me than some other people around this table. And maybe I have more of a personal stake in this and a personal stake in making sure that we advance the goals of this process. This is part of our
So I just want to add that again, I do think it's a worthy exercise. I have other -- like all of us, have other work to do as well to advance equity, but I do think that's the purpose of it, however taxing it can be at times.

MS. PODZIBA: Tony?

MR. EVERS: There is no question that the equity issues impacts people of color more than they impact me. But as a professional and the state superintendent, it is the top priority and it always has been. That's why it caused CCSSO to make it a top priority in their work going forward.

It's just that I continue to have to balance that with what is overreached, what is making law when Congressional intent isn't that. And that's my balance. So I just wanted to flag the fact that that continues to be the balance I set up front. If I had a magic wand, every penny that they have on innovation and
testing would be used to create tests for your kids in your native schools where the kids learn through their native language, and because of their interaction with the culture they're achieving at a higher level. I get all that.

But the fact of the matter is we're a committee here, and one of the things we have to think about is whether or not these things overreach and are out of the realm of Congressional intent.

So that said, I mean, I could tell you if I had -- if I was going to make a poll, that I'd eliminate some of this. I know that's not worth the discussion.

So I'm telling you right now that I want to flag this to have that discussion at any point in time.

MS. PODZIBA: Thank you. With that, and I appreciate that.

Audrey?

MS. JACKSON: I'd just be curious to
learn more, Tony, about how you're interpreting Congressional intent, because that's not my area of expertise, but also -- and you don't have to go in depth on it now, unless you'd like to. But I also just want to clarify, wasn't part of Congressional intent also to have this committee exist and to address the issues listed for us?

Because we're not addressing all of the issues put forth in ESSA. But these were the ones for why we're here.

And I'm not saying that we can go crazy. There are things that I would like to add or move or whatever. But to say that we can't do anything or make any interpretation I feel like would make the meeting invalid.

MR. EVERS: Well, it's a judgment call, but I'll give you a small example, and Leslie's example is a perfect example.

One could say that the reason they were considered in the same vein as Puerto Rico is because Congress, A, didn't think about it, or B
decided not to do it. If they wanted to include the schools that Leslie's honoring and working so hard to make successful, that would be part of the law. And it's not part of the law. So it seems outside of the intent of Congress that that be inserted in the law by us.

Would I love to do that? Absolutely. But Congress is the body that created it. That's a small example -- not a small view, but that's a specific example where I believe we may be exceeding Congressional attempt.

MS. JACKSON: Yeah, I guess I'll just again repeat that the other part of Congressional intent was to assemble this group to work on these issues.

MR. EVERS: It was more than Congressional intent. They said we had to do it. That's different than Congressional intent.

MS. PODZIBA: Two more comments on process and then we'll move to 4B.

Lynn?
MS. GOSS: I guess it was my impression that the Negotiated Rulemaking Committee was to clarify the language but not necessarily insert things that would benefit one group or another. And so, I guess part of me feels like we're like putting words in people's mouths, and so, I guess that would go to Tony's argument that, you know, adding some of these things isn't what was intended to putting it back down to the state and local level.

And so, when we regulated at a federal level, it's a lot different than when it's regulated at a state level, or a local level.

MS. PODZIBA: Janel?

MS. GEORGE: Ok, last little point on this, and I'm probably putting on my law professor hat right now. I teach a litigation clinic at the University of the District of Columbia, and this is one thing that we talk about, What is Congressional intent? What is plain statutory language?
The creation of the committee is plain statutory language. Part of what we're tasked with is clarifying what that statutory language is, what it means to aid in the implementation.

I actually agree with Tony's point. That doesn't mean necessarily adding new language unless it's of a clarifying purpose. We can't add in new provisions or put in things that we would have liked to have had in the law or would have liked to have seen.

What we can do is aid in the implementation and provide the clarification that states and districts need to properly implement the law consistent with the purpose of the law, which again is equity. I think we've all agreed upon the purpose of the law, the purpose of these Title I provisions -- excuse me. I think that's clear. And I think that's what we're all here trying to effectuate.

Again I think the means by which we do that is going by the provisions, going through
these provision, having meaningful conversations about what's outside of the scope, what's within the scope, and we only do that again by going through this exercise and breaking down those specific provisions and having these discussions, which it seems like we're proceeding with. But again, some of this is a little bit laborious and it means walking through some of these provisions. But I do think we have to be specific in our concerns and what we're talking about, and I do think we have to leave that out. What this committee is tasked with again is clearing the plain statutory language.

MS. PODZIBA: Thank you. Patrick and everyone, I think we'll move to 5B, and Patrick, I'm going to ask you to start off by giving us an overview of the regulatory language.

MR. ROONEY: I will say just as a last point on the last set of discussions you were making.
We took very seriously the language in the statute, and I think you can see that from the proposals that we put forward, that we listened alot to the discussion that we had last time and all of your comments and the language that's in the statute and tried to propose things that we felt clarified things in the statute. Like where there is a requirement that states have to identify the languages available to a significant extent, but does not identify what that means, we tried to provide some criteria that states could use without being prescriptive on what that means. So we tried to strike that balance, and I appreciate Tony and others who flagged that for us during the discussion, and I know that will be part of the discussion going forward. But I did just want to say that we are trying to be very aware of the language in the statute and providing clarification where we think it's needed, and we're aware of the balancing point that Tony mentioned.
1 So on that note, we can move to Issue Paper 5B. Now this is Including English Learners in English-Language Proficiency Assessments.

4 Again, we did share proposed language on this issue paper last time, and the version that's in front of you here is very similar to the version that you saw last time. There are a couple of changes.

9 First, we heard from several of you that there was a need to clarify in the proposal that the English language versions in tests be a uniform statewide test. So you will see that under 3A, that requirement that it be a uniform statewide assessment of English language proficiency. And again that's current practice in all states, so this is just clarifying that in the regulations.

18 Second, there was a lot of discussion in the last session about whether the ELP test needed to be submitted for the same peer review as the Reading Language Arts, Math and Science
Content Assessments. We took that back and talked about it internally, and we think these assessments do need to be subjected to the same peer review requirements that the Reading Language Arts, Math, and Science Content Assessments do.

Again, you won't see that here in this proposed language, because it's covered in the same place it was covered when we talked about the eighth-grade math exception.

So, I can point you to on the top, while it's on 200.2(d) in the full package, the red-line version, on Page 4 the very bottom, and the top of Page 5 where we identify the assessments that are the subject of peer review and we include 200.6F (1) and (3) are points referencing the ELP assessments. 200.6(3) is referencing the ELP assessments.

So I just wanted to point out. So that is now in the full package. It's not necessarily included in this issue paper.

Third, there were several questions
about accessibility on ELP tests and we tried to make several changes in order to make that clear about English learners with disabilities who need accommodations on an ELP test. And you can see this -- sorry, it's on Page 21 of the full package.

So there's a bolded Roman numeral IV on the full package. I'm starting on Line 14. We talked about the need to provide appropriate accommodations for students for English language proficiency assessments, and this is where -- so sorry.

If you then look on Line 17 and 18 of that romanette IV, we specifically reference A(1) ad A(3), so that is referencing students with disabilities who are -- children with disabilities covered under IDEA, and children with disabilities who are on a 504 plan, students on a 504 plan or covered under Title II of the Americans With Disabilities Act is what is referenced under A(1) and A(3).
So the state has to make sure they're providing appropriate accommodations for those students on the ELP test.

And then finally the last point, and if you could stay on Page 21 of the full package, sorry for the confusion, romanette v, starting on Line 19, there's a question about whether there needs to be an alternate ELP assessment for some English learners with disabilities who can't take the general ELP test, even with appropriate accommodations.

After we discussed it further based on the conversation that we had at the last session, we believe that that is now the case, that states need to have an alternate assessment for students with the most significant cognitive disabilities on an ELP test, for students who cannot participate in the general ELP test.

And that's covered under romanette v on Page 19 -- or I'm sorry, Page 21, romanette v, beginning on Line 19.
With that I'm happy to open up the discussion.

MS. PODZIBA: Liz? You're up.

MS. KING: I appreciate the addition of this language and sort of the response to the conversation we had last time.

I just wanted to flag -- and this will get fixed in 200.6 when we talk about different accommodations -- the two areas of intersection between English language status and -- or status in the English learner and status in the child with disability would be the disability accommodations on the native language assessment and the English language accommodations on the alternate assessment.

So, if this is covering an alternate assessment of English language proficiency, it's not covering an alternate assessment of the state academic content.

So we will cover this in 200.6. I just wanted to flag that.
MR. ROONEY: Liz, that's right. This section is only about the English language proficiency test. So this romanette iv and v are about accommodations on the English language proficiency test and then the need for an alternate assessment for the English language proficiency test.

MS. PODZIBA: Lynn?

MS. GOSS: Did I hear you say that it also incorporates the ADA? Say that again for me.

MR. ROONEY: Yes, and we'll talk about this when we get to 4A, I'm sure, but if you want to look at the reference, if you look at the full package, it's on 200.6, on Page 12 is where we do 200.6A, and Line 10 is where we do 200.6A(1), and that's children with disabilities covered under the IDEA. And then Line 16 is Students Eligible For Accommodations Under Other Acts, Including Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

MS. PODZIBA: That's part of Issue 4A,
so if you don't mind holding off on that, Lynn,
we'll get to that, if that's ok.

MS. GOSS: Ok.

MS. PODZIBA: So on 5B, Aaron, you're
up.

MR. PAYMENT: So I just did a revision
of my dissertation and I'm hypersensitive to
certain words. Do we need "that are?" "The state
must provide appropriate accommodations necessary
to measure students English language that are"...
those two words are probably not even necessary,
"that are".

MS. PODZIBA: Where are you?

MR. PAYMENT: I'm under five. So it
says "The state must provide appropriate
accommodations that are." "That are" can be
scratched, because they say the same thing.
They're superfluous.

MS. PODZIBA: Janel, do you want to --
we're going to have battling degrees, English
degrees.
Rita.

MS. AHRENS: Sure, on I guess Page 2 and 3, in the reporting of "providing coherent and timely information about a student's attainment with those standards," can we add in the clarification that it should be in a language that the family can understand?

MS. PODZIBA: Page 2?

MS. AHRENS: Yeah, Page 2, going onto 3, on the issue paper, itself. I want the addition of "in a language that the families can understand". Because it would not be beneficial to have that information in English.

MR. ROONEY: Rita, can we make an amendment for you guys to consider? If you look at the full package on Page 23, it's a part of the regs that we haven't changed at all, so we haven't brought it up for you, but under Assessment Reports, starting on Line 12 through 16, that we would just essentially use the same language about making -- we just try to be consistent, so we're
talking about "timely and coherent information"
then you'd have the same expectation.

    MS. AHRENS: Should we reference that
particular language then? I just want to make it
explicit and then I'm ok with the reference.

    MR. ROONEY: You want it just repeated
here?

    MS. AHRENS: Alright, sure.

    MS. PODZIBA: Would that repeat, or
I'll do it a better way, Patrick, what exactly
would be repeated?

    MR. ROONEY: Actually Kay is reminding
me of that we have slightly different language for
you guys to and visit.

            Sorry, if you actually go in the full
package to something that's covered in 200.3, you
have an updated language -- or go to Page 7 of the
full package. It's the very last line. It starts
on Line 47 and then it goes on to the next page.

            We are going to talk about this more,
and so maybe we just want to table this for now
and say that we'll come back to this, but we have proposed for your consideration some language about how you make information available to parents and the public.

I'm happy to talk about this language later and then we can make sure that we try to be consistent with the language and put it into this section of 200.6 that we're talking about in this issue paper.

MS. PODZIBA: Conceptually, is there any concern about putting in here an assurance that the report is in a language understandable by the parents, and that whatever we do in this later issue will get moved into here as well? Is there any concern about that? Is everyone ok with that?

Ok.

Alright, Delia?

MS. POMPA: My comment is going to be that I don't have any comments about this. I think this captures everything we talked about the
last time.

I do have a question, though, and it may come up in regulations that the Department does that don't include negotiated rulemaking, but I do want to just put the bug in your ear about screeners.

I know this is particularly about the annual English proficiency assessments, but as you probably know in identifying students, to be designated as English learners most states use a version of theses English language proficiency assessments as screeners, and I totally recognize this is not part of this today, but I do want to put that bug in your ear, because this would be the only place I could think of where it would come up unless you find a place for that sort of thing, and it's very important in terms of the validity of the assessments.

MS. PODZIBA: Thomas?

MR. AHART: Thank you.

On that last point, I just want to flag
that. I at least want to recognize, because I don't know what those changes will be in light of that reference, but certainly to the extent practicable would be important. I'm thinking about the wide range of languages and often times you don't find anybody literate in a language spoken by two or three of the students. It's just important that there is some reasonableness there.

MS. PODZIBA: That "to the extent practicable" is what we're likely to see.

Lynn, do you have another comment?

MS. GOSS: No, thanks.

MS. PODZIBA: Ron?

MR. HAGER: Thank you.

And this is actually referring earlier to Tony's comment about English learners with disabilities and how language proficiency is part of the content standards. So it is actually specifically spelled out here, where in the other one it wasn't. But that is where the dovetailing is.
So if you have a student with a disability that's also an English learner, you know, you can, through accommodating the disability and English, both, you could measure language proficiency in other matters.

So if someone knows American Sign, or if there is a Spanish version of American Sign, they would demonstrate the proficiency, kind of merging both together.

MR. EVERS: Thank you.

MS. PODZIBA: Any other discussion of 5B? Tony has nothing else, so I think we're good. So the only outstanding item then, which is not in dispute, is that language will be carried in I think from issue three? Is that where it comes up? It will be carried in, and we will be sure that it includes "to the extent practicable".

Ok. Leslie?

MS. HARPER: I will of course carry on from my previous issue with the Puerto Rico
exceptions. So, again in the English language proficiency section, it would say, 933, "Developing uniform statewide assessment of English language proficiency, excepting programs of instruction through Native American languages and Puerto Rico languages," because that's an exception given to Puerto Rico. It's related to the same issue.

And then part B, "Requiring each LEA to use such assessment annually," again "except programs of instruction through Native American and Puerto Rico languages." So I mean just again, equating the limited Spanish language proficiency with limited native language proficiency provisions.

I'm not trying to get out of assessments. We're then saying we could provide them as a content area, language arts assessment as a separate content area. We could provide schedules, that makes sense.

Our experts at the last meeting, when...
they presented to us, talked about developing academic language proficiency over an up to eight-year time span.

So, again, assessing English language proficiency should be on a reasonable and rational schedule.

MS. PODZIBA: Patrick, did you want to respond?

MR. ROONEY: Could I just ask a clarifying question, Leslie, to make sure I understand.

This is about the English language proficiency test?

MS. HARPER: Yes.

MR. ROONEY: Would you want students in Native American medium schools to take a Native American proficiency test for that language, whatever the language was? Is that what you are proposing in place.

MS. HARPER: Certainly we do, and we would want to be excepted from annually, starting
in kindergarten, starting at a time that's inappropriate.

We would say at a certain amount of time after English because the medium of instruction, more than fifty percent of the time, you know, and we could describe how that would play out.

But it would hold it off. If they have to start that in kindergarten when they're not even being instructed in English, it doesn't make sense. And, you know, it's caused our students to be pushed out of our native language immersion schools. In our experience and in the past, we've had to actually not provide our education in our native languages where our tribes and our communities have designated that as a priority.

MR. ROONEY: I think I understand. I feel like maybe I want to make sure I totally understand.

So you're saying that a kindergartener in your schools would take, instead of an English
language proficiency test, they would take an
Ojibwe language proficiency test?

  MS. HARPER: Yes, or the native
language in which they are instructed.
And then as English language arts as a
subject is introduced, which it is in all or
native language medium schools in the U.S., it
becomes a subject of study, just like it is in
Puerto Rico, then you would begin a schedule of
proficiency assessments as that is, you know,
appropriately built into the student's academic
learning schedule.

  MR. ROONEY: Ok, thanks. I just wanted
to make sure I understood that correctly.

  MS. HARPER: We're still on Puerto
Rico. We're asking for the same considerations.

  MR. ROONEY: That's a question we'll
have to take back, as we did under 5A.

  MS. PODZIBA: Audrey.

  MS. JACKSON: I'm just curious -- this
is just to ponder. We don't have to discuss it

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
now, necessarily -- but if there are any
safeguards or guardrails, or the term to use, to
to protect students or to guard against states
sort of lowering the bar for what it means for
students to have English language proficiency in
order to make a higher likelihood of more students
to reaching proficiency or improving over time.

MS. PODZIBA: Aaron?

MR. PAYMENT: So this may help you to
understand.

So, I think what we're asking is
actually a compromise, because what we're asking
for is that -- we're not asking to be exempt from
the state working to develop the assessment tool.
We're asking for any circumstance where they can't
do it, that those students be exempt. And we're
talking about very narrowly about those immersion
schools, so let me give you an example of the way
that this could work, and in some states it works
very well.

So in Michigan -- we had to fight for
this for years and years and years -- but we have
now -- so our language instructors originally were
traditional people in our community and they were
not college-educated people.

So probably about fifteen years ago we
decided that it's in the best interest of our kids
for us to get the credentials to understand
cognition and writing and everything.

So, in Michigan we passed a law
probably about eight years ago that allows for
defereence to state -- tribal certification of
language instructors in our native language, and
so it defaults to us. And so we have that in
place now.

So, at our tribal school we have a guy
who is -- he didn't learn the language
traditionally. He learned it through higher
education. He became fluent through that process.
He's also an educator and he has a doctorate
degree. But it doesn't meet the typical
certification in the state, but it gives deference
to tribal governments in a
government-to-government relationship.

And so we developed our own
certification process that mirrors the state, but
it's a matter of sovereignty then, because we then
certified that language instructor to provide and
implement our understanding in our own school
system. And we're very stringent in our
standards.

So I think that what we're asking for
is that the state be allowed to try to take an
ttempt at it and try to negotiate it with the
respective tribes.

Remember you're going to have several
different languages that you try to do this with,
so it's got to be practicable. And if you aren't
able to do it, if it just can't be done, then
there's an exception like Puerto Rico.

So that's what we're asking for.

MS. PODZIBA: Delia?

MS. POMPA: I was going to ask Audrey
if your question was generic to English proficiency tests across all states? Is that what you were asking?

Is there a danger that states could make their standards so low?

MS. JACKSON: Yeah, I guess it is generic. I wouldn't say that they would necessarily have to be "so low," but I'm concerned about -- if the goal is to move children to English proficiency levels, and that's part of your accountability system, it seems like there should be some safeguard.

I don't know if that's within the scope of this.

MS. POMPA: I do think there are safeguards in the law.

MS. JACKSON: Ok.

MS. POMPA: I think for one, the fact that this has to go through peer review now will make a difference. The fact that these have to be based on the standards that are set by the state.
MS. JACKSON: Ok.

MS. POMPA: And then also I think the fact that the authority has now gone to the state, there's a lot of room for advocacy at the state level to make sure that doesn't happen.

MS. JACKSON: Thank you for addressing that for me.

MS. PODZIBA: Are there any other questions or issues related to Issue Paper 5B?

So we've got two outstanding pieces, one, reports to parents in a language understandable to them to the extent practicable, and another about a possible exemption for Native American medium schools.

People want a break or can we move right into 4A? It doesn't feel like we've been sitting that long.

Let's start 4A. There will probably be a good reason to call a break in the middle of it.

So, Patrick?

MR. ROONEY: Alright. So, I will start
this, and then there will probably be a break at
which point we want to hear from the subcommittee.

MS. PODZIBA: Thank you, right.

MR. ROONEY: You want me to do this
first before I go into the text in the issue
paper?

MS. PODZIBA: What's your preference
subcommittee? Maybe have Patrick introduce it and
then we'll have the report out from the
subcommittee?

Ok.

MR. ROONEY: Alright, and there's kind
of a natural break before we get to the alternate
assessment --

MS. PODZIBA: Excuse me. Before you do
that, did the subcommittee report get circulated
yet?

MR. ROONEY: It should be in your
binders, but I'm not positive.

MS. PODZIBA: I don't know if it was in
binders.
MS. PODZIBA: We're circulating it as we speak.

MR. ROONEY: So there is a lot of text in this issue paper. There is lot of text in this issue paper. There was a lot of discussion last time, so that makes sense.

So based on the discussion, and further discussions that we had in the Department after the discussion at our first session, we have proposed the language for our discussion starting on Page 2 of this issue paper.

A couple of things in the first page and a half that I'll go through, then I'll take a break, in Section A, so the first part of Section A, we have rephrased how we're trying to identify these students. So instead of saying, "accommodations for students," we're saying "students eligible under IDEA and other acts". So we tried to change that phrasing based on the discussion we had in our first session. So then that will then set up a lot of how we...
cross-reference other pieces throughout the reg.

So now it's "children who are eligible for accommodations," and we broke it into three pieces. So it's "all children with disabilities" as defined under 602(3) of the IDEA.

And then two, which is actually a subset of one, that our "students with the most significant cognitive disabilities who are identified by their IDT teams among students" in Paragraph A(1), or children in A(1).

And then three is the new piece where we tried to clarify -- remember the statute had the phrase "other acts"? And in the previous regulations, in the affirmed regulations, we referenced students under 504 Plan of the Rehabilitation Act.

And we tried to clarify that that would be, "students eligible for assessment accommodations under other acts, including Section 504 of the Rehabilitation Act and Title II of the Americans With Disabilities Act," and that I think
1 was a recommendation that that's one flag for us
2 to also make sure we reference Title II.
3
4 So the language that then follows below
5 that is very similar to the version you saw in
6 Issue Paper Six on the first session, but we
7 changed the language throughout that section to
8 reference "students eligible for accommodations"
9 instead of "students with disabilities".
10
11 If you look on A(3), which -- if you
12 look at, sorry, B(3), on Page 3, it's the red text
13 on the second page -- on the third page. This is
14 a new paragraph that requires that "States must
15 ensure the use of appropriate accommodations on
16 assessments. Do not deny a student eligible for
17 accommodations the opportunity to take a state
18 assessment or provide a benefit that is not equal
19 to the benefits provided to students who do not
20 need accommodations".
21
22 So that is a mouthful that is
23 consistent with the language that we saw in Issue
24 Paper 5A, and we talked about making sure there is
not -- there is the same benefit afforded to
students who take an accommodated form of the test
versus students who do not take an accommodated
form of the test.
And we think this is necessary to be
consistent with Section 504 of the Rehabilitation
Act and also Title II of the Americans with
Disabilities Act, to make sure it's not
prohibiting or making any discrimination against
students with disabilities.
I might stop there before I get into
the next section, which then gets into alternate
assessments aligned with achievement standards,
where you might want to hear from the sub group,
but it might be good first to see if anyone has
any comments on the first page and a half of the
proposed text.

MS. PODZIBA: Ron?

MR. HAGER: So did you want us to hold
off on the reporting out of the subcommittee until
we get to the four, which would basically be 4B,
which is c?

MR. ROONEY: No. I was actually proposing that we just talk about what you see on all of Page 2, and then Page 3 through number three now, and then we can take a break and we can hear from the sub group after that, before we get to what starts with little letter c on Page 3 of the proposed text.

Does that make sense to the group?

MS. PODZIBA: Let's do that. So we're opening discussion on Page 2 and 3, up to and including the red paragraph number three. Lynn?

MS. GOSS: So this goes back to the question about the ADA. And I know that there's a requirement in your 504 processes and in your IAP processes that that's where you're determining the accommodations and modifications for that particular student. How are the accommodations and modifications going to be processed for students
that don't fall under those categories and fall under these other acts?

Is it just somebody just says, I want to have, and then they get? Or I guess I need some clarification as to how do we determine how that process is going to look like on the ground.

Because I can see that being either highly abused or I could see it highly, you know, unused to its potential.

So, I see it being problematic.

MR. ROONEY: So maybe I need to get a little bit more clarification on that.

I would point to Page 3 of the text just below the struck-out piece which talks about, "The state must develop, disseminate information on and promote the use of accommodations to ensure that all students eligible for accommodations participate in the assessments for the grade in which the student is enrolled".

So there is an expectation that the state is identifying the accommodations and
providing -- disseminating and providing the use
of those accommodations, and also providing
support to special education teachers and other
staff around the selection and use of those
accommodations.

So that would be part of what the
state's required to do, right?

MS. GOSS: But that doesn't answer the
question then what the process is on how you would
get to what those accommodations would be for that
particular student.

It might give you the guidelines of
what an appropriate accommodation could be for a
student, but it doesn't talk about how you would
determine an accommodation for a student who
doesn't have a process in place to determine
accommodations, even if it's at the state level.

MR. ROONEY: So let me see if I can get
clarification on that and we will get back to that
question, Lynn. I don't know the answer off the
top of my head.
MR. PODZIBA: Regina, was your comment going to go to Lynn's question?

MS. GOINGS: Yes. I think when we're talking about accommodations we're talking about, not just for our students with LMPs but also those under 504, the process is very similar where there is a meeting and accommodations are discussed and they are written, as they are in the LMP, although the forms are different.

So accommodations, there is a process, and the process is very similar.

MS. GOSS: I know that there's a 504 process and an IEP process. That wasn't my question.

My question was, if somebody -- if there is student C, you know, you could have an IEP student and a student with a 504, and then you could have a student that may just fall under this other category of just having a disability but not having an IEP or 504...

Can they, under this, then just state
that they get an accommodation?

MS. GOINGS: I guess I would have to understand what the disability is, because if there is a disability --

MS. GOSS: That's my question.

MS. GOINGS: And I guess if there is a disability, should 504 or an IEP be considered, and so that is up to the teams --

MS. GOSS: But that's not what this says.

MS. GOINGS: So if you could define exactly what that student would look like, the student with disabilities, who does not fall under Section 504 or an IEP.

MS. PODZIBA: Ok, Patrick.

MR. ROONEY: I think we're still trying to figure it out.

So this is a new part of the regulation that was added, partly because of the discussion of this group in session one. Previous regulations just focused on a child with a
disability covered under IDEA and a student eligible under a 504 plan.

It was flagged that there may be children who don't fit into either of those first two categories but are covered under Title II of the Americans with Disabilities Act. I don't know if there is an existing process. That's what I'm trying to get to your point, Lynn.

Ron, I don't if you've got -- do you know the answer to that?

MR. HAGER: Yeah.

Department OF ED STAFF MEMBER: I think we're talking about students who are not eligible for state services under IDEA or Section 504, but they're claiming accommodations under Title II.

Is that how you read this regulatory, this proposed provision, Lynn.

MS. PODZIBA: Ron?

MR. HAGER: I do and I have a technical amendment to kind of fit all this together. It won't deal with the issue of ELL students and...
their process, but there is a quote, unquote "process" for students with disabilities under Title II. It's much more loosey goosey, but there is a requirement that every public entity have a process for accommodations, but it's not as specific. There's not necessarily a team.

So, if you want I can kind of suggest the technical change up here and then you can kind of parallel down below where you have the process for the IDEA and 504 students.

MS. PODZIBA: Sure.

MR. HAGER: That might be the way to go.

So the first thing would be, you've got the students with disabilities under IDEA, ok, under A(2). Then you have A(3), students with disabilities -- or whatever, under 504 and the ADA. What I would suggest is you have, three, would be the students under 504, and you would say, and four, Title II of the ADA, to make clear that they're separate.
Then when you do the process, you can refer for each group of students to that appropriate process.

So then when you go down below to sublet i, you've got the students with disabilities, pursuant to the IEP team. That's the sublet i. And then sublet ii would be for 504, it would be the placement team. And then for three, you would say for students with disabilities under Title II of the ADA -- or students covered under Title II of the ADA, pursuant to the school districts or states or whatever, appropriate Title II process.

So they're supposed to have a Title II process. It's not as spelled out anywhere really. There were some requirements. It's very different than 504. So this would give the reference to the process without telling the states what the process is.

I think that may be the simplest way to kind of have this parallel system covering all
groups.

I mean, a student that meets the definition of "disability" under Title II would probably also meet the definition under 504, but this gives the student -- it's kind of trying to play out with the provision of "in other acts".

Parents may choose to go under 504 -- sorry. Parents may choose to bypass 504 and just ask for the accommodations under the ADA. It's just an accommodation. So that's why I think we want to have this in here, and then if they do choose to use the ADA, then it is the ADA process.

So that's all you need to say in your regulations is that for the ADA group it would be the Title II ADA accommodation process.

MS. PODZIBA: So let's look at that proposed change. So let's look at that.

So any questions or comments about breaking out students under Title II of the Americans with Disabilities Act as a separate number?
MS. KING: You need to add I think at the end of that "and other acts".

Sorry, you Number 4. So it should be (4), "students eligible for assessment accommodations under Title II of the Americans with Disabilities Act and eligible under other acts," or something like that.

MS. PODZIBA: Take it out of three?

MS. KING: Yeah, sorry.

So the problem is that there is a later reference to an IEP team and a later reference to a placement team. And the IEP team only applies to IDEA and the placement team only applies to 504.

MR. ROONEY: Sorry, a friendly amendment would be, under three, have a sub under three -- three would be "students eligible for assessment accommodations under other acts," and then, "including," and then A would be "Section 504 of the Rehabilitation Act" and B would be Title II of the ADA.
MS. KING: Right. The only thing is that for consistency, later you would have to change, where it says for each student under paragraph A(3), it would have to be A(3)(1) --

MR. ROONEY: And then A(3) two.

MS. KING: Yeah.

MS. RIGLING: Because what this does is it gives credence to the statutory language about "other acts," rather than saying that the only two acts at this point, but maybe not in the future, that this applies to are IDEA and 504.

MS. PODZIBA: Alvin, did you have a comment on this?

MR. WILBANKS: I have a question. I was just going to ask, to include the "other acts," is that a straight follow-in inclusion? I mean, how you go about making the request very different.

I just wonder if that's a straight follow-in act? I'm asking a question. I personally would not think so.
MS. PODZIBA: Patrick.

MR. ROONEY: Sorry, I didn't understand your question, Alvin. You're saying does --

MR. WILBANKS: I don't think, when you say "IDEA or," the others aren't equal, and it seems to me that the applicable here would be IDEA, not necessarily ADA like the others.

I'm just asking, is this add a straightforward add, or is it a little bit of overreach?

MR. ROONEY: So I think our understanding is that the statute says "students eligible under IDEA and other acts," and we're trying to clarify what those other acts could include.

I don't think we're making that -- I don't think we're trying to make any statement about the weight of one versus the other.

I think we're trying to help clarify the language that's in the statute, which I think -- the phrase "other acts" to us seemed, and

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
I think we talked about this last time, seemed a little unclear as to what that could possibly be for states and districts to try to figure out what kids is the law talking about, which is why we're kind of trying to clarify it.

MS. PODZIBA: Ron.

MR. HAGER: I was just going to direct to you, Alvin, the reason why you need to have that "other acts" still in there is that is in the statute.

So I think Congressional intent there was there could be acts in the future that come out. They didn't want to limit it to Section 504 in the ADA, but there was no question that they at least included 504 of the ADA.

So I think the way that this is structured now does really meet the Congressional intent.

Students under the ADA and 504 are protected. Whether we say anything in here or not, they're protected, and, you know, they have
the same entitlements really to accommodations as that students with disabilities under IDEA. There may be a different process of doing that, but if there is a determination that there is accommodation, it's an equal right. They have a statutory right under those accommodations under whatever provision they're under. So if it's a 504, they have a right to those accommodations under 504. If it's the ADA, they have a right to those accommodations under the ADA.

To having it all here in one place to deal with the types of statutory provisions that protect students with disabilities, so you have got kind of for the states and for everyone else, you have everything in one place. All the types of programs in which students are entitled to accommodations are all addressed.

And by making this clarification down below, at least for the three we have the process. For any other acts, we don't know what that process is. We have a process identifying each of

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
the provisions. It's just really to make it
simpler for the states to implement these
requirements.

        MS. PODZIBA: Alvin, do you want to
        follow up?
        MR. WILBANKS: I understand what he
        said, but I don't agree that this -- this is
        speaking purely for the student's need to have
        accommodation for educational purposes. It's not
        life acts or other things which I think ADA is.
        Again, I'm just saying, I don't think
        this is a straight follow through addition to the
        act.
        MS. PODZIBA: Liz?
        MS. KING: So I wanted to sort of put
        Lynn's point into Alvin's question.
        I mean, the law did not notice this
        regulation as written currently to create any new
        right to an accommodation. These rights to
        accommodations exist already in these other civil
        rights laws. So for example Title II of the ADA
refers specifically to assessments.

So, just to keep that in mind.

I mean, we could just say "other acts"

and then hope people know that that means 504 and

other things.

If we had not said it, if we don't say

it, it doesn't change anybody's eligibility under

those other laws.

So we're just spelling out that which

would exist either way, whether we said it or not,

just because those laws supersede the regulation

here.

So I wanted to say that. I also wanted

to ask for a change from eligible -- and I think

maybe this will help clarify -- a change from

"eligible for assessment accommodations" to

"entitled to assessment accommodations," because

we're not talking about children who would prefer

an accommodation or would like or would find

convenient an accommodation. We're only talking

about those children who through a civil rights
law are entitled to an accommodation.

And I think if we put "entitled to an accommodation," I think it helps to clarify that who we are talking about is only those children for whom there is provided an affirmative right in one of these laws.

MS. PODZIBA: Alvin, does that clarify it for you.

MR. WILBANKS: It helps.

MS. PODZIBA: Anything else on this issue? This was the original issue that Lynn raised.

Kay?

MS. RIGLING: I just want to put a pin on that change and check with some people in my office as to whether they're comfortable with that, changing "eligible" to "entitled" to.

MS. PODZIBA: Rita, I know you've been waiting.

MS. AHRENS: It's a different issue.

MS. PODZIBA: Ok. Hang on just a
second. I'll get you next.

Ron?

MR. HAGER: So you guys originally had
"students with disabilities" and you changed it to
"eligible for." And so what we're saying is, the
eligibility for accommodations is determined by
the 504 team or the IEP team or the ADA team.

Once that determination of eligibility has been
determined, then they're entitled to those
accommodations.

So that's why we're saying there's an
eligibility process in terms of, are you eligible
under the IDEA, or 504, in those unique
definitions, and once you're eligible under those
protections, the next question is are you eligible
for accommodations, and if so, what accommodations
are you eligible for?

Once the team has made that decision,
it's an entitlement. In the same way that the IEP
team might say, We're going to recommend five days
a week of speech, once that recommendation for
speech has been put into the IEP, it's an entitlement. If the school district didn't provide that speech, there would be due process consequences.

In the same way, once an IEP or 504 team has recommended an accommodation, if that accommodation is not provided, that would be a compliance violation that then would be subject to due process consequences.

So that's why there's steps in the process where there's eligibility determinations being made, but once those are made and there has been a decision by the team, you know, 504 or IEP or ADA process, once that's decision has been made, then it becomes an entitlement.

So that's why we're asking for that clarification.

There is a question mark of whether they are or are not eligible for accommodations. Once the team has made a decision, that question mark has been removed. It's now they're not
eligible to, they're entitled to.

I don't know if you understand how the link of the law is in terms of what does it mean when a 504 team makes a recommendation for something. That recommendation becomes an obligation on the school district.

MS. RIGLING: Except that right here it seems to be we're still talking about "eligible" for. But like I said --

MR. HAGER: Oh, up there.

MS. RIGLING: Yeah. I just want to take it back and make sure that that's not a change that anyone in my office has had.

MR. HAGER: At that point maybe it's appropriate to use the phrase -- I'm sorry, at that point it may be "eligible," you know in terms of the process of determining it.

But as you go on and you continue to use that phrase, like you say, "here and after eligible for," I think we'd say "here and after would be entitled to".

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
MS. PODZIBA: There are a couple of other voices that may be helpful. Audrey and then Lynn.

MS. JACKSON: I just wanted to echo what I think Ron is trying to say, where there are many students in my class who could be eligible for accommodations if their parents decided to go through with a certain process.

But that doesn't necessarily mean that when I say that they're eligible that they receive it. They have to elect into it to receive it and be entitled.

I don't think you necessarily heard that.

MS. PODZIBA: Did you hear Audrey's point, because it may be helpful?

MR. ROONEY: No, sorry. Could you repeat it, Audrey.

MS. JACKSON: I was saying that I am concurring with what Ron was trying to say where, from a teacher's perspective, I have many students
in my class who clearly could be eligible for certain accommodations if their parents decided to pursue seeking those accommodations or diagnoses through an IEP or 504 Plan. But just the fact that they could be deemed eligible doesn't necessarily mean that then they would have it.

I can't just say, "Oh, they get this accommodation on this particular test because I deem that they are eligible, or I know they would be eligible. You have to go through that route, and then once they are deemed eligible they become entitled, but through the official process.

I think I said it better the first time.

MS. PODZIBA: Lynn.

MS. GOSS: I guess a couple things come to mind. First of all, is there an actual team that makes these decisions where the school is involved with the ADA with Title II, and how does -- under an IEP or a 504, you have money appropriated through the schools and through the
state, how is the accommodations covered financially if it's a Title II in this instance?

So, to me, if the money is going to follow the mandate, where is the money coming from for the Title II ADA accommodations?

MS. PODZIBA: Ron, do you have an answer?

MR. HAGER: It's the same for Title II and 504.

So the idea is the only one that has extra money that accompanies the law.

So under 504, if you already get any federal money, you're bound by 504, the money you already got. So you don't get any extra money for 504 or the ADA.

So it's really this is a provision of Congress. The laws basically have already been passed. Even though you don't get any money to do it, as Liz says, it's already required. Under both 504 and the ADA, accommodations and assessments have already been required. They just
1 don't happen to have any additional funding.
2 But the accommodations are the same
3 types of accommodations: extra time, tests read, you know, those kinds of things that typically I
4 think the expectation is they shouldn't be very
5 expensive. Some there are, obviously.
6 MS. GOSS: That's the job that I do
7 every single day.
8 MR. HAGER: Right, right.
9 MS. GOSS: When I'm working as a
10 paraeducator, I am the one that's implementing a
11 lot of these accommodations, and there aren't
12 enough of us to go around. To actually have us in
13 the classroom and being able to do the things that
14 we need to do, then, you know, it's hard to know
15 how we're going to make that happen and make it
16 feasible.
17 MR. HAGER: The point is since 1990
18 this has been an obligation, without any extra
19 funds. And for 504, since 1973, this has been an
20 obligation, without any extra funds.
So we're not adding any laws here.

These are already on the books. They have been on the books for dozens of years. So that's really just all we're saying.

That let's everyone know what the laws are. When we're doing our assessment system and we're including students with disabilities, we need to make sure we're including all the students with disabilities under all the different rights that they're entitled to.

MS. PODZIBA: Regina.

MS. GOINGS: Unfortunately IDEA has never been fully funded, so school districts have had to look into pockets to support it. One of those pockets has been Medicaid, and now that school districts can get reimbursed for services through Medicaid, that supplements some of the funding that IDEA provides.

But, we know that part of the problem, too, is lack of staffing, and we try to be cognizant when we are having the IEP meetings, or
any team meeting for that matter, that we provide reasonable services that can be reasonably achieved, and that is sometimes difficult because you go into a room, you've got a list, I've seen kids in IEPs where they're thirty-five, forty pages long and nonachievable.

So what we try to do is try to look at what's best for the child and what they can achieve hopefully within one year or less.

So I don't know if that answers your question, and I know it's hard for paraprofessionals because I supervise them, and I see how ragged they're run and how difficult it is for them to provide for accommodations.

That's why it's very important that when we're doing IEP's, or any meeting for that matter, to make sure that what we do is reasonable.

MS. PODZIBA: I don't want to go to far into operations. I want to stay on the reg text.

If there is a final comment.
I know Kay said she wants to take this back, and Rita has been very patient waiting for our new issue.

Any final comments on this item?

Ok, Rita, new issue.

MS. AHRENS: On Page 3, romanette i, under alpha numeric two, where it says that in the statute, "develop, disseminate information on and promote the use of appropriate accommodations to ensure that all students eligible for accommodations," I wanted to clarify whether that "disseminate information on" is just to school teachers and administrators, or whether that's available also to parents?

I raise this as a flag because, you know, I work with parents who have shared that there are times when they cannot understand the accommodations available to their students because the IEP teams are not translating or interpreting these. So sometimes they're asked to sign documents on which accommodations their child will...
receive without actually understanding what those accommodations are.

And so if the intent here is to provide information on eligible accommodations to parents, as well, then I would recommend that we do as we did in 5A and make sure that, to the extent practicable, that it is in a language that families can understand.

This is a very important issue to limited English proficient parents who are having difficulty supporting their students who have disabilities.

MS. PODZIBA: Patrick, can you answer that question?

MR. ROONEY: So the language in the regulations doesn't speak to that particular point. The way most states have operationalized this is by making information about their accommodations available publically and then providing guidance to all their districts to provide further down to schools and parents and
IEP teams. I think that's typically how this has been in practiced.

Others at the table who work on this more closely in their own jobs that states or districts or school level might be able to clarify that, but that is more or less how I believe the practice is carried out.

MS. PODZIBA: Regina.

MS. GOINGS: There are safeguards that are given to parents. Some I've seen read like Miranda rights. So it just depends on the local level how it's presented. But parents are to be explained the process and it's supposed to be in their language and a language that is understandable to them.

Now do schools always follow that? I don't know.

MS. AHRENS: Well, I think my -- if nobody dissents, I would like to clarify this so that we do provide that safeguard.

I mean, it's already supposed to
happen, but I'm telling you there's actually a civil rights case complaint in New York City from parents who have not received IEP information in a language they can understand. And it's problematic. And there are numerous cases where the parents have said that, you know, they just need that information.

MS. PODZIBA: Patrick?

MR. ROONEY: I think the interaction here between ESSA and the IDEA is relevant, and I do think the IDEA regs address that parents need to be provided information in a language that is understandable to them. So I think that language exists in terms of guidance that goes to all IEP teams. So, I'm not sure here also --

MS. GOINGS: It should be.

MR. ROONEY: But I mean, that's a separate question than about whether they're meeting the requirement that's in the regulations.

MS. AHRENS: I guess my question is is there any objection to adding that clarification
in here, to the extent practicable, in a language they can comprehend.

MS. PODZIBA: Kerri?

MS. BRIGGS: Not necessarily an objection, but I assume that the guidance with the regulation and non-regulatory guidance and IEP was pretty broad, pretty expansive.

There is a lot there. And I worry about drafting in just one little piece from that notion here.

It just feels like there might be a lot of something that's missed, or if something gets confused in the process.

So, I don't know, maybe Patrick and your team can just go back and come back and tell us if what's in the IEP regulations or guidance to parents around this issue, so that if there is a way to just make sure they're in sync together, that might be helpful, before we sort of drop in language, "make sure parents can understand it".

That feels like we might cause some problems that
we don't intend.

MR. ROONEY: I'm happy to talk about that and see if we can come up with something that seems like an alternative approach.

MS. PODZIBA: Delia?

MS. POMPA: Sorry, I didn't bring this up earlier. I didn't realize we were leaving A totally. I just thought were were leaving the disabilities part.

I just wanted to sort of document, memorialize, make sure it's on the record that we talked about adding something about English learners in here in the general introduction to accommodations and lifting them out of the other acts. And I understand the Department is going to go out and come back with language for us. Thank you.

MR. ROONEY: We're going to try.

MS. PODZIBA: Liz.

MS. KING: Yeah, just two sort of quick thingies. One, I would take out the word
"appropriate accommodations," just because I think it add a confusion about sort of adding a new level of discretion or implying or suggesting a level of discretion that doesn't exist and shouldn't be suggested to exist. Just to me it's confusing. So I would just say "accommodations" rather than having the qualifier "appropriate".

And then the other thing is, moving down on -- sorry, I'm back at 200.6B. So that is at the beginning of B and then frankly it comes up several times as a qualifier, and I would just take it out and only say, "accommodations" since I think it's clear that the accommodations we're referring to are those students are entitled to under the list of laws that we listed.

But further also, in 200.6B --

MR. ROONEY: Sorry, just a flag, "appropriate accommodations" is actually taken straight from the statute.

MS. KING: Ok.

MR. ROONEY: That is the statutory term
that they use for both students with disabilities and English learners.

I think at one point, it was "reasonable" and we changed it to "appropriate accommodations," because that's the actual language from the statute.

So I just wanted to flag that for the group's consideration.

MS. KING: That's fair. I'm worried that it implies a level of discretion. That's all. So I did want to flag that concern. If we may be bound by the statutory text, then that's what that is.

So moving down where it says, I think there's a sentence that needs to be reordered. It's suggests something -- so, it should say -- sorry, at the end of that red sentence, it says "the appropriate accommodations such as interoperability with, assistance with technology devices that are necessary to measure the academic achievement of the student relative to the state's
academic standards, then those words, for the grade in which the student is enrolled, should be moved to after "of this section". Because for the grade in which the student is enrolled is referring to both the general assessment and the alternate assessment. (Brief pause.)

MS. PODZIBA: Can you see if that's right.

MS. KING: I think that's right. So now it reads, "the appropriate accommodations... for the grade in which the student enrolled".

MS. RIGLING: Does that apply to students who take the alternate?

MS. KING: Yeah, they take grade-level alternate standards. A fourth grader takes an assessment aligned with the fourth-grade academic achievement standards.

MS. RIGLING: Content standards, not academic achievement standards.

MS. KING: Oh, gosh. We talked about
this so much, and we thought we were right. It's so hard to read it with the strike-outs. I'm going to go back and read and think again.

It's a good flag, Kay, and it is part of what we thought about, not wanting to conflate academic standards with achievement standards. So let me just check on that and then just come back to me in a minute.

MS. PODZIBA: Mary Cathryn.

MS. RICKER: I actually have something from Page 2, so I can wait 'till you're done with this.

MS. PODZIBA: Also, the time really flew. Why don't we take a break. So let's be back at 4:00 and we will start with this issue.

(Recess taken.)

MS. PODZIBA: Could everybody take their seats and we'll keep going.

So, when we took the break, Liz and her team were working through this language, so I'm going to turn back to you, Liz, to tell us where
we are.

MS. KING: Yeah, so I think that we were right in our original thinking.

I just wanted to flag sort of the setup here is that you have grade-level content standards from which you have what are called the challenging state standards, which could also be thought of as the general achievement standards.

And then also you have the alternate academic achievement standards.

Under the challenging state standards, you have the general assessment, and under the alternate academic achievement standards, you have the alternate assessment.

So, it is the case that both the general assessment and the alternate assessment, aligned to alternate academic achievement standards, are both grade-level standards, and so, it is appropriate to move the reference to "for the grade in which the student is enrolled" to refer to both of those assessments and both of
those sets of standards.

Unless Kay, does that work?

MS. RIGLING: I don't think that works for me.

MS. KING: So, should we -- should we come back and talk about it at the next break?

MS. PODZIBA: Does it not work because it's not accomplishing what it needs to, or because the grade in which the student is enrolled should not be modifying the alternative academic assessment?

MS. RIGLING: I "think the grade for which the student is enrolled" modifies the content standards on which students with the most significant cognitive disabilities are assessed, but that the alternate academic achievement standards are not aligned with the grade in which the student is enrolled.

MS. KING: That is not my understanding of the law.

So, I wonder, do we think Martha maybe
could weigh in to add to the -- and it may be that
I am using the wrong word in one of these things,
but I feel pretty confident having consulted with
one of my constituencies.

MS. RIGLING: Ok, achievement
standards are essentially proficiency, above
proficiency, and below proficiency. So under the
regular assessment, those achievement standards
have to be based on the grade in which the student
is enrolled.

So if the student is in fourth grade
and they are proficient on the fourth-grade
assessment, that's great.

If they're being instructed at second
grade but they're enrolled in fourth grade and
they're taking the fourth-grade assessment, which
they should be, they have to be measured against
the fourth-grade proficiency achievement standard.

So, they may not be proficient at fourth grade,
because they're being instructed at a second-grade
level. They're measure is against the
fourth-grade proficiency standard.

That isn't true for students with the most significant cognitive disabilities who are measured against alternate achievement standards.

MS. KING: But those alternate -- so that fourth grader is taking an assessment aligned, an alternate assessment aligned to alternate achievement standards aligned to fourth grade. Not --

MS. RIGLING: Aligned to content standards for fourth grade.

MS. KING: Right. So there is all of the alignment in the world applies for all children, both those in the general assessment and general standards, and those in the alternate assessment and alternate achievement standards.

I think the second-grade instructional level is a useful example because that's exactly sort of the concern here is not wanting to signal that the alternate assessment is an out-of-grade assessment; that it is a within-grade assessment,
alternate act of achievement assessment aligned to
those grade-level alternate academic achievement
standards.

MS. RIGLING: I'm not sure we're
willing to say it that way. I don't think we have
ever said it that way. I think that we have said
that the alternate assessment is aligned to
grade-level content standards.

MS. KING: Right, isn't that -- sorry,
I think what you just said up there is what I said
up here.

MR. HAGER: Right, just put it up
there. Or grade-level content --

MS. KING: You could say grade level
twice. They're both aligned to the grade for
which the student is enrolled. So in lieu of
striking it, you could leave it where it was and
then also add it again at the end.

Does that work for you?

MS. RIGLING: I think for the
alternate achievement standards -- the kids who
take the one percent, the alternate against alternate academic achievement standards, we want to make the point those assessments are to be aligned and the instruction provided the students is to be aligned with grade-level content.

To my knowledge, we have never said that the alternate academic achievement standards are aligned with grade-level academic achievement standards. We have always focused on the content standards.

MS. KING: So, so but it says, "necessary to measure the academic achievement of a student relative to the alternate academic" -- if you were to sort of leave out, there's two clauses there, right?

"Measure the academic achievement of the student relative to the alternate academic achievement standards under 1111B(1)(e).

So I think your concern is not to suggest that we are taking those children who are included in the alternate assessment and assessing
them under the challenging academic standards,
right?

MS. RIGLING: Right.

MS. KING: That is inappropriate, because they are being instructed -- their assessment is aligned to alternate achievement standards, not the general achievement standards.

But I'm going up a level, right, which the grade-level reference is up from there. So you have the challenging state standards and you have the alternate academic achievement standards,
both aligning to the grade-level standards.

MS. RIGLING: Grade-level content standards.

MS. KING: Right, yes.

MS. RIGLING: One of the problem, the statute now has this term, "challenging state academic standards," which it defines to include both the content standards and the achievement standards, and we would read that to be all for the grade in which the student is enrolled.
So that term applies to the general assessments. We can't use that term when we're applying to the alternate assessments, because of the fact that, in brevity, it has combined two concepts that we think for the alternate achievement assessments are different. Because we want to clearly make clear that they are alternate assessments are aligned to grade-level content, but, not necessarily -- or probably not grade-level proficiency.

MS. KING: No, I certainly hear what you are saying, and I totally agree with the construction of the law and the problem that it caused by merging the content and the achievement standards.

I'm happy to entertain sort of an alternative way of solving this problem. What I am worried about is a perception that an alternate standards is an out-of-grade standard when it is a grade-level standard that is different. So that is the objective here, and I am
happy to accomplish at that in another way, and if
this creates confusion about what the challenging
academic standards are, or something else, if
there are other words that will fix this, I'm
happy to do this in a different way.

Because I think you're not disagreeing
with my objective, right? You're not disagreeing
that the alternate achievement standards are for
the grade in which the student is enrolled, right?
The question is maybe the efficiency
words in here is creating a confusion.

MS. PODZIBA: So could I give it a try.
So leave the "standards for the grade
in which the student is enrolled" where it is.
Then "for alternate academic
achievement standards under section," da-da-da, of
this section "in accordance with grade-level
content standards"?

MS. KING: I think the --

MS. PODZIBA: I thought that's what I
heard Kay say, that it's grade-level content

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
MS. KING: Yeah, I think the problem that Kay was pointing out is that is not a thing in the law because of the merging of the achievement standards.

MS. PODZIBA: How about if we flag it and someone will come up with a fix for that. Ok?

Alright. Mary Cathryn, did you have another issue?

MS. RICKER: Yes, thank you.

On Page 2, there is a strike-out, and I'm just looking for clarification on why the "student's IEP team determines" got struck, if the statute actually struck this, or for another reason?

I'm just thinking as a general education classroom teacher, I rely very heavily on my invitation to an IEP team, as well as the expertise sitting around an IEP team, to best understand the accommodations I would be providing or assisting with in my general education class.
And so, by removing that, it ends up being very nebulous that the accommodations that are necessary to measure the academic achievement of the students, because it's very nebulous as to, who do I look to as a general practitioner, what the accommodations are.

MR. ROONEY: Sorry, I didn't mean to cut you off.

I think this is where we changed the language. Before it used to be "students eligible for accommodations" -- excuse me, "students with disabilities," and now it's "students eligible for accommodations".

When we re-jiggered the language in order to start with that framing, that we're talking about students eligible for accommodations.

In this paragraph we had to start upper level and would say, "of all students eligible for accommodations," we lay out what's here in B. And then if you go down to romanette I, we say, "who
is responsible for identifying the accommodations". And that's we say for each child under A(1) and A(2), which is a student, a child with disability, it's the IEP team that does that.

So we changed the reference down under romanette i.

MS. RICKER: So you said you just moved it?

MR. ROONEY: Right. We covered it down there and then we can cover the 504 plans below that, and then Ron's suggestion to cover whatever the process is for the IEP plan is three.

But all of that is around how you can supply appropriate accommodations for the students.

MS. RICKER: I really appreciate that clarification.

MS. PODZIBA: I think we can move on in these pages.

Kerri, did you have something in one or two?
MS. BRIGGS: No, Page 3.

MS. PODZIBA: Ok, above paragraph C.

MS. BRIGGS: I was curious about

romanette ii, "ensuring all general and special
education teachers and staff know how to
administer assessments".

Just more of a question, does that mean
like every teacher in the school needs to know
this, or is it the teachers in the school that are
involved with delivering the assessments?

I get that statutory language, so you
can just tell me, it doesn’t really matter, your
question.

MR. ROONEY: Good question you pointed
out, Kerri.

I also think is that this is not more
clarified than that. This may be the kind of
thing that Guidance could be appropriate, or
specifically states often will create, you know,
instructions and trainings that they give to
districts and then districts administer in their
classrooms to make sure the people who are giving the test understand how to give the test and particularly how to do the accommodation.

So I think it will probably look different from one state to the next and from one district to the next.

MS. BRIGGS: So states and districts and schools have reasonably figured out how to comply with this provision?

MR. ROONEY: Yeah, when we do our peer review, states provide provisions about how they made trainings available to districts, and districts can provide information about how they're making the training available to whoever is administering the test in the schools.

MS. PODZIBA: Are there any other concerns up to paragraph C on Page 3?

So, we'll keep going. I think it's a good time to ask Ron to do the report-out from the subcommittee, please.

MR. HAGER: Yes, and you should all
have the summary. We had the call, it was from 2:00 to 4:30. So we had a special group that got tortured more than the rest of you.

Anyway, the task as you can see was to discuss -- and this was kind Tony's -- or Aaron's modification of what I think it was Rita's original proposal. The task was to discuss the need for a definition of students with the most significant cognitive disabilities and what such a definition might include if one was deemed to be necessary, and we really didn't get to that direct question.

However, we did make some progress. And so, what we did is we did agree upon these principals, and actually one of them, it took an additional meeting to get clarification and get agreement on.

But through an initial meeting, follow-up discussion and some e-mails, we did come up with these operating principals, agreed upon principals, that would govern how we approached
this whole question.

So that's probably the best way to frame what we did, is how far we got in terms of our discussion.

So the first one was the goal is to ensure that students who should take the alternate assessment do take it, and those who should not take it, do not.

I think maybe I should go through all four of them and then if people have questions...

The next one is, many states are currently accomplishing this goal, and there is concern that some states may not achieve that goal.

Next is a recognition of the importance of the IEP teams and their focus on the needs of individual children within definitions, criteria and guidance.

And lastly the need to regulate within statutory constraints directives to the state.

So those are the four operating
principals that we felt were important as we addressed these two questions.

MS. PODZIBA: Any questions about the subcommittee, or do any of the other people who participated want to say anything more? Audrey?

MS. JACKSON: I just have a question if you left it open for how to interpret who should and should not take it, or if you're assuming that the one-percent cap the appropriate measure of who should and should not take it.

MR. HAGER: Yeah, we're operating within the one-percent rule. The whole thing is how do we effectuate the one-percent guidelines. So the students who do take it, that is within the one percent.

I don't think we explicitly said that, but I think that was our whole understanding as we were addressing the law. The law says one percent.

So, that was really presumed, I guess
MS. PODZIBA: And thank you to the subcommittee for working hard offline and over the weekend.

So, Patrick, with that in mind, perhaps you can take us through the next part of this issue.

MR. ROONEY: Alright. So back to Page 3 of the issue paper. So the next section, 200.6C is where we begin to assess the alternate assessments based on alternate standards.

We're going to talk about the one-percent cap and requirements around that in the next issue paper, so this is more of the other components of the alternate assessments.

So there are some significant changes based on the discussion we had last week or two weeks ago and internal discussions that the Department had in the interim period. So the language looks pretty different than what you saw in Issue Paper Six last time. A lot of the text is the best way to put it.
Based on our read on IDEA and the changes that were made to IDEA as part of when ESSA was passed, IDEA requires that all students with disabilities be included in a state's assessment system under Section 1111, which is the work we're focused on here, with appropriate accommodations, and then alternate assessments where and necessary. And then as indicated in their IEP. That's the language in the IDEA.

Because of the increased availability and access to accommodations and the focus on the principals of Universal Design For Learning and other changes and advancements that have happened in the field of assessment in the last two years, we believe that the vast majority of children with disabilities can take the general assessment with accommodations, and we believe therefore that the students with disabilities for whom an alternate
assessment is necessary -- and again borrowing the
language from IDEA -- are students with the most
significant cognitive disabilities will be
assessed with an alternate assessment aligned with
alternate academic achievements standards.

So as a result, our regulations started
here in C, and then carrying forward on Page 4,
are really focused on the alternate assessment
based on alternate academic achievement standards.

There was a very fruitful discussion
two weeks ago when we talked about some of the
language around alternate assessments that
measured grade-level achievement standards.
We've
removed that as we think that students, children
with disabilities can now take the general
assessment with accommodations, and that that is
not necessary for children with disabilities that
really -- the alternate assessment is really
focused on students with the most significant
cognitive disabilities.

So, that is the most significant change
that we made to this section.

On Page 4 you'll see the requirements for alternate assessments. We did make one change on the top on number one that, before we had "the state has defined alternate achievement standards." We revised that to say "adopted," because that was the language that was in the statute.

And then under romanette i, we talked about the test needs to make -- the state needs to make sure that the assessment is aligned with the challenging academic content standards.

This is the conversation Liz and Kay were having, that alternate assessments need to make sure that they're aligned to the grade-level content standard in which the student is enrolled.

I think Rich asked a question in the last session about what happens to upgraded students, which we didn't address in the regulations, but typical practice in states is that the student is assessed against the grade
1 that relates to the age of the student, and that
2 our assumption is that that would continue to be
3 the case through the regulations. We didn't
4 clarify that, but current practice would continue
5 through these regulations.
6 And then the other piece that wasn't in
7 the last version of the regulations in Issue Paper
8 6, that we clarified is here under romanette iii,
9 and we're kind of in the middle of Page 4, about
10 "at a state's discretion it can provide a measure
11 of student growth".
12 We did clarify this. So, I think the
13 language in the statute is "at the state's
14 discretion provides measures of students growth
15 under the alternate assessment," which does mirror
16 the language for all assessments, for the general
17 assessment as well.
18 And we clarified that we're talking
19 about valuable and reliable measures of student
20 growth across the full spectrum of student
21 achievement, and I think that is our way of saying
1 that the assessment is measuring growth for both
2 low-achieving and high-achieving students, that
3 they need to make sure the assessment is robust
4 enough to measure growth for the full range of
5 students taking the alternate assessment.
6 And then, further, relating to the
7 change we made around "alternate assessment based
8 on grade-level achievement standards," we struck
9 little romanette iii, under Reporting. So now
10 "states will be reporting on the number of kids
11 take the regular, the regular assessment
12 accommodations, and the alternate assessment based
13 on alternate academic achievement standards".
14 And then Number 6 is taken from the
15 statute that the "state may not develop or
16 implement any alternate achievement standard for
17 children with disabilities that are not alternate
18 achievement standards for students with the most
19 significant cognitive disabilities," and this is
20 taken from the statute.
21 So, it might make sense to take a break

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
there and see if people have questions on that aspect, see if there is any discussion on that part of the text.

MR. KING: I'm not sure what we're covering.

MS. PODZIBA: We're looking at the bottom of Page 3 through Page 4 up to including paragraph 6, which is in blue bold.

MS. KING: Sorry I was looking at the full package. Sorry, can you say the page again?

MS. PODZIBA: Sure, Page 3, beginning with paragraph C, Alternate Assessments, up to and including the bolded paragraph 6.

MS. KING: Yeah, I have a couple of different things. Most of them are minor.

So in C, C(1) romanette iii, "at the state's discretion". I would say, I think this is a little confusing, because it felt as though the state had discretion to use valid and reliable measures. And I would instead change the wording to, "if a state uses growth, uses valid, reliable
measures," it doesn't change the meaning. I don't think certainly it changes the intent. I was concerned about what the discretion is. If we took out "discretion" and used the words "provide," we're referring to valid and reliable.

MS. PODZIBA: Let's just get that one. "If the state uses growth"...

MS. KING: So strike "provides" and insert "uses".

MS. PODZIBA: "The state uses growth," I think you're missing something.

MS. KING: "If the state uses growth measures"... Yeah, is that the word that's missing?

MS. PODZIBA: "Measures valid and reliable," read out your whole sentence.

MS. KING: I know, it doesn't make sense in my notes either.

"If a state uses growth measures, it must," or "those measures must be valid and reliable measures of student growth, across the
full spectrum of student achievement". Something like that.

You're point is not that there's discretion about whether or not it's valid or reliable or whether or not it's the full spectrum student of achievement. The discretion is whether or not to use growth at all.

If you're going to use growth, it must be be valid and reliable across the whole spectrum of student achievement.

MS. PODZIBA: Kay, can you give us a response to that? Does that work? Or Patrick.

MS. RIGLING: I think the lead-in is "alternate assessments that" -- it has to work with that lead-in.

MS. KING: Alright, then I would say, if it includes measures of student growth, use valid had -- ok.

So I would start romanette iii with, "if it includes measures of student growth, those measures must be" -- thank you, "those measures
must be valid and reliable across the full spectrum of student achievement.

And you could strike out "measures of student growth" if you wanted to.

"If included measures of student growth, those measures must be valid and reliable across the full spectrum of student achievement".

MS. PODZIBA: Richard, did you have a comment on this change?

MR. POHLMAN: Sorry, I misplaced my note from the morning. So the bolded blue is statutory text that you have gone back and scrubbed and added because it's statutory text?

Is that right.

MR. ROONEY: Yes.

MR. POHLMAN: So then I think that a friendly amendment might be that maybe adding -- maybe striking everything you've added here and keeping romanette iii with what the statutory text says, which is "at the state's discretion provides measures of student growth," and then adding
something, a second clause after all of that that said, "if the state chooses to do so, measures of growth must be valid, reliable and across the full spectrum of student achievement".

I think the current proposal interrupts the statutory language.

Does that make sense, Liz?

MS. KING: Yes.

MR. ROONEY: So then your suggestion then is romanette iii would be just the statutory blue text, and then you'd make a sub A.

MR. POHLMAN: Or add a clause afterwards.

MS. RIGLING: Why don't we do exactly what you said and then at the end of the "growth,"

"which must be valid and reliable across the full spectrum of student achievement"?

MR. POHLMAN: Correct.

MS. RIGLING: Or is it, "must be valid and reliable in measured growth across the full spectrum"?
MR. POHLMAN: I think that works.
Sorry, this just a friendly amendment
to Liz. So I'll actually accede back to the
original person, if you'd like.
MS. PODZIBA: Is there anyone for whom
this won't work?
Kerri?
MS. BRIGGS: "Across the whole spectrum
of student achievement," I haven't seen that
phrase in references to both measures before, or
am I just not remembering that? I'm not sure what
that means here.
Does that mean like you're supposed to
include all of the achievement levels?
MS. KING: I think the policy issue is
making sure you're not just measuring growth in
the middle, but you're measuring growth at the
bottom and the top.
I'm looking at the law now.
MS. BRIGGS: So that would be across
all the achievement levels. So I guess the
assumption is that -- maybe not assumption, but I think there is a requirement about how many achievement levels you have to have. Is that what that's referencing? If you have to have at least three achievement levels?

MS. KING: If it's a growth level measurement. It's not actually reference to the --

MS. PODZIBA: You're trying to all things at once.

Patrick, can you help us out here?

MR. ROONEY: So Kerri, you're right, this is new language that we're proposing here for our consideration to discuss today.

The intent is, as you indicated, that we're trying to make sure that if -- and this is in particular with the alternate assessment that is for kids, that measuring growth on an alternate assessment is challenging and in order to do that you want to make sure you're doing it to capture growth for both low-achieving and high-achieving
students on the alternate assessment, which is again I think a particular challenge on an alternate assessment compared to a general assessment where states have a bit more history and practice trying to do it.

So, we thought it was helpful to make clear that, if you're going to measure growth on the alternate assessment, that you need to be attending to the full spectrum of performance in measuring both for all of those kids.

MS. BRIGGS: Ok, I get the point. Maybe this is completely separate words, but I don't know --

MR. ROONEY: We're definitely open to suggestions on the wording.

MS. PODZIBA: Thomas, was your point on this item?

MR. AHART: Yeah. I'm getting a bit confused on the full spectrum of student achievement when we're talking about the alternate assessment. And I'm trying to find out where is
the delineation between the alternative assessment and the regular assessment.

I know that sounds like a very simple question, but I'm getting lost in that I don't understand what we're doing differently for students that are recognized under IDEA and Title IV and VII or 504 as something for which we need to accommodate.

MS. PODZIBA: Patrick.

MR. ROONEY: So I would say that I think for both the general assessment and the alternate assessment -- here we're just talking about the alternate assessment. For both, there is a permission that states have to measure the achievement for the grade in which the student is enrolled, and then there is the permission for them to measure growth of those students against those standards.

So it shows up in 200.2 when we talk about the requirements for general assessments.

And then here when we're talking about alternate
I think, particularly because measuring growth on an alternate assessment seems challenging. There has not been as much experience with states doing it. And we wanted to make clear that they should be measuring growth for all students, particularly the low- and high-achieving students on the alternate assessment.

MS. PODZIBA: Tom, does that help?

MR. AHART: I probably won't be able to get any more clear on that.

MS. PODZIBA: Kerri on this point?

MS. BRIGGS: Yes, so I was looking at the reference where it measures growth on the general assessment and it doesn't look there like it's further explained, so I'm wondering if this is an issue that's better handled with Guidance.

I don't have a huge preference on that.
I am just kind of struggling with what -- when I first heard it I thought, and then across multiple grades.

MS. PODZIBA: Rita is your comment on this item? Ok.

Richard.

MR. POHLMAN: I think also just to maybe go to Kerri's comment, there is likely even more that needs to be said about what valid and reliable and across the full spectrum means than what you could even put in the regs. So you're probably going to have to follow Guidance on this anyway.

So it may just be best to leave the regulation what is in the statute and pursue of the full breadth of any Guidance. I don't know if that makes any sense.

I think Liz's point is exactly right.

I think this needs more structure in it, but --

MS. PODZIBA: So it sounds like there is a proposal to revise three, so that it says "at
the state's discretion provides measures of student growth."

(Dissent from the floor.)

MS. PODZIBA: Because that's reg.

So what is the proposal? Could someone offer the proposal.

Richard?

MR. POHLMAN: Sure. I'll start the proposal at you just drop any addition to the text from the act.

MS. PODZIBA: That's what I read out and people said that didn't work.

MR. POHLMAN: Then I can't offer the proposal.

MS. PODZIBA: Ok. Kerri.

MS. BRIGGS: I would leave in valid and reliable.

MS. PODZIBA: So "at the state's discretion provides valid and reliable measures of growth." So I'm going back to what was there before.
MS. BRIGGS: I'm agreeing with Liz' position. Yes, the way it was originally worded made it look like valid and reliable was a discretionary act, and I don't think that's what anyone intends, ever.

So what's discretionary is measuring growth, and if you do it, there needs to be a bottom line.

MS. PODZIBA: Ok, so this way. Does that work for everyone?

Aaron.

MR. PAYMENT: So with measures, if I understood what was intended by the full spectrum of student achievement, I might support it, but it's not articulate.

We know that we wanted "valid and reliable". So I think it's a term that -- is there any meaning behind the term or the phrase "across the full spectrum of student achievement," because we might be fighting for something that nobody really is --
MS. KING: I'm happy to sort of clarify that and then kick it back to the Department.

The mean, the meaning of full spectrum of student achievement is making sure that those children who are high achievers on the alternate assessment, that we are measuring the distinction that they are a higher achiever who becomes an even higher achiever, or if they are seriously a low achiever, very much struggling on the alternate assessment, that if they make growth on that level, that we are counting that as well; as well as a child making growth in the middle.

That is the meaning of it. But I'm happy to kick it back to the Department sort of more of the -- since, to be frank, I just wanted to make sure we weren't making "valid and reliable" optional. That was my primary concern here. So I'm happy to kick it back to them on the importance of including this piece.

MR. ROONEY: I'll just clarify that.

There is no specific technical meaning of the
phrase "full spectrum of student achievement," in full disclosure and honesty.

I think that Liz's description was accurate and that's the same description I would give you as kind of what we intended with this language. But it's not there's a defined definition of what that means that we can point to in a, you know, a technical or statistical manual that is other than what we just said, or that even would be in the manual.

MS. PODZIBA: So is there anyone who has concerns about the language that's on the screen right now?

You have a question? Yes?

MR. HAGER: I guess it's the word that's included. "At the state's discretion provides measures of student growth," which -- it's a "measure of growth," which is "included" the best word?

I agree with everything in terms of principal. Is "included" the best word?
MS. KING: I mean you could also just say, right, "provides reliable and valid measures of growth". Would not achieve the --

MS. PODZIBA: No, that was what you had the problem with.

MS. KING: Oh, I'm sorry. Oh, the irony. It's been a long day.

MS. PODZIBA: Marcus, did you have a --

MR. CHEEKS: I'm just going to note, it's language of this matter that throws people that are not in this room completely off the process.

So I think we have conceded that it counts really lofty and good, but it has no value in terms of adding to the process. So, I just thought I'd put that out.

If we're struggling with it, the field is definitely going to struggle with it.

MS. PODZIBA: Ok, should we let the Department clean this up?

MR. HAGER: Yes, yes.
MR. ROONEY: I think I probably need to consult with some other people before we have a final decision final.

MS. PODZIBA: I think the concept is known and we'll let you clean it up.

New issue, Rita.

MS. AHRENS: And I apologize if I sound like a broken record, but on Page 5, lower case D, alpha numeric three, where parents --

MR. HAGER: What page?

MS. AHRENS: Page 5, alpha numeric -- or lower case D, number three, where we ensure that parents and students elected to be assessed using an alternate assessment aligned with alternate academic standards.

I just want to ask that we also either reference the part where that information is provided in a language that we can understand, or we state is it here explicitly, and again I just want to note that we have a lot of violations of this. This is a legal obligation for districts to
do to the extent practicable, so we can add in that phrase.

But I will note that this is not being done for Spanish-speaking families as well as Asian-American Pacific Islander-speaking families.

So it is a widespread problem and misunderstanding that needs to be clarified.

MS. PODZIBA: Ok. Patrick?

MR. ROONEY: So I appreciate that suggestion. We haven't quite gotten to Page 5.

I'm happy to jump into it if people have questions.

MR. HAGER: No, do the one before that.

MR. ROONEY: Do the one before that.

MS. PODZIBA: Ok, Ron?

MR. HAGER: The reg assessments, this the black, is that old reg, the black?

MR. ROONEY: Yes. But which part?

MR. HAGER: In D, Reporting, sub one romanette i and ii.

MR. ROONEY: That's from our current
MR. HAGER: Is it adding to the statute? People are wondering --

MR. ROONEY: I think this might be something that was in the regulations under Child Left Behind.

MS. PODZIBA: Liz?

MR. ROONEY: But it's something that happened in the last fifteen years, because it's been in the regulations.

MS. KING: Sorry, C three, romanette ii.

MS. JACKSON: Could you say a page?

MS. KING: So I'm on Page 15 of the packet.

MS. PODZIBA: Are you on Page 4 of the issue paper?

MS. KING: I think I'm on Page 3 of the issue paper.

No, then I must be on Page 4.

MS. PODZIBA: Could you read out the
beginning of the sentence?

MS. KING: So it says three, "the state
must, one, not prohibit an LEA from assessing more
than one percent".

MR. ROONEY: Liz, can I say, that is
what we're going to talk about in Issue Paper 4.B.

MS. KING: Ok, sorry.

MR. ROONEY: Trying to get ahead of us.

I appreciate that.

MS. PODZIBA: Ron, do you have another
item?

MR. HAGER: One more. Six in bold, it
is the statutory text, however in the title it
says "prohibition and any other alternative or
modified achievement standards."

So the title includes the word
"modified," which I think means that that's what
they meant they would be covering here. I think
that was really what they were most concerned
with.

So I would propose that in six, where
you have it bolded, "the state may not develop or implement for use under this part any alternative or modified academic achievement standards," just put in the word "modified". Match it to the title of the provision, and I do appreciate how much you did to clarify all that stuff, because we spent a lot of time on this the last time.

Thank you.

MS. RIGLING: I think that's probably covered by Congress.

MR. HAGER: Right, by Congress, and by you. I'm kidding.

MS. PODZIBA: Anything else up to almost the bottom of Page 4, Paragraph 7?

Patrick, why don't we keep going?

MR. ROONEY: So on the bottom of Page 4, Number Seven, we have a separate issue paper related to this that's around computer-adaptive assessments.

I think based on the conversation we had two weeks ago and then our subsequent
conversations, I think we determined that it made the most sense to split out the computer-adaptive assessments.

You'll remember in the statute, they talked about computer-adaptive assessments in one place, and they say, "states may at their discretion develop computer-adaptive assessments".

They may also develop computer-adaptive alternate assessments and computer-adaptive ELP assessments.

We have put them in the sections where they fit with the rest of their assessments, with the rest of that discussion of that assessment.

So number seven is where we discuss the requirements for states if they develop a computer-adaptive alternate assessment where we just take from the statute the one change we clarify in the statutory language is that romanette i, on five, we clarified the assessment must be based on the state's academic content standards.

We thought, given the discussion we had
a little while ago, and the confusion about what
the test should be aligned to, that it made sense
to specify in this section that, if you have an
adaptive assessment you need to make sure it's
measuring the content standards for the grade in
which the student is enrolled.

Now, the next section, D, there's a
little bolded highlighted section for all of you.
This was also in Issue Paper 6, so if I just
remind you that a lot of the language that's here
is current regulatory components that have been
actually just moved from 200.1, which is not
regulation we brought to discuss. It's about the
state's academic content standards that we are not
regulating on, so we didn't bring for your
discussion.

But this component about the state
guidelines for IEP teams is about the assessments
and it made more sense actually to move these in.
And the statute also included
additional components of the requirements states
have for state guidelines for IEP teams, and we wanted to combine those together so they're in one spot. So for that reason we moved much of what's here on Page 5 from 200.1 into 200.6 and made it D.

So I think Rita has already flagged for us a question that she has about this around number two here on Page 5.

But this sets expectations for state guidelines that if a state adopts alternate achievement standards, then they must make sure they're monitoring implementation with IEP teams, providing guidance to IEP teams about expectations for participating in such assessments, including implications for state graduation requirements.

Much of this language is not different. There is the bold blue piece on the bottom of Page 5, where we I think just forgot to include this component about... "how participation in such assessments may delay or preclude the student from completing the requirements for a regular high
school diploma".

So we clarified that, and then there is the requirement below it, Number 4, that, "taking an alternate assessment may not preclude a student from attempting the requirements for a regular high school diploma."

I think that's the end for that section, what I think makes sense. I think we could hold E until the end and just talk about the state guidelines here on Page 5 and 6.

MS. PODZIBA: Tom.

MR. AHART: Just to be sure that we're being clear on D one, if we could insert in the second line there, "establish long-term implementation of clear and appropriate guidelines" and then add, "as required under IDEA section 612, A 16 C," I think it is, and then continue on as written, just to make sure that folks know that we're still aligning that with current regs under IDEA.

MS. PODZIBA: Everyone ok with that?
Great.

Are there other discussion points or questions on pages -- bottom of four, five and six, not including E?

Mary Catherine.

MS. RICKER: My question is from Page 6. Again, looking at the deletions and in the middle of the page, especially the portion of "general and special education teachers and other appropriate staff received training on administering".

My other clarification of a strike-out, if that is addressed somewhere else or if that -- if that is now just a missing expectation.

Again, as a general education teacher who may share some responsibility for -- did it just you get moved?

MR. ROONEY: Sorry, so the piece on Page 6, I think we realized that it was duplicative, that we had it in two places. This is for guidelines for states if they adopt
alternate achievement standards. But if you go back to Page 3 of the issue paper, looking at romanette i and romanette ii, the top half of that page, I think these guidelines apply to states or all states, whether they have alternate standards or not, and there where it was on Page 6 is then kind of repetitive and applies to states if they adopt alternate achievement standards. So it seems like we didn't need it in both. And putting it in the first location made more sense that its' a clear expectation for all states, regardless of whether they adopted alternate standards.

MS. RICKER: I may need to come back to that, because know how to "administer assessments" feels different to me than "received training on administering".

So, I'm going to flip back and forth. You can move on, but like I just want to flag that as not feeling congruent..

MS. PODZIBA: Ok, Thomas?

MR. AHART: No.
MS. PODZIBA: Ron, do you have another item?

MR. HAGER: Yes. Under D(2), they "must notify about how it may delay or otherwise affect a student receiving a regular high school diploma". So with delay, you mean delay in terms of it may extend beyond four years? "How participation in such assessments may delay or otherwise affect the students from completing the requirements of a regular high school diploma".

So delay is typically meaning beyond the normal course of time? That's what you were thinking?

MR. ROONEY: So this is taken from the statute. If you look on Page 27 of the statute, Page 27, B(d), its "ensure that the parents of such student are clearly informed," and B(d) says "how participation in such assessments may delay or otherwise affect the students from completing
the requirements of a regular high school diploma. So we just tried to use the statute.

Mary Cathryn, your question, if you actually look on the next page of the statute, on Page 28, that language about how to administer the alternate assessments shows up on Page 28, under Roman Numeral V (aa) at the top of the page.

MS. RICKER: I don't have Page 28. Mine goes to Page 25.

MS. RIGLING: Are you looking --

MS. GOSS: Under Relevant Statutes.

MR. ROONEY: Sorry, I was looking at the actual ESSA.

MS. RICKER: Got you. Ok. Page 25, where am I looking --

MR. ROONEY: Page 28, Roman Numeral V at the top third, and then (aa) underneath it.

MS. RICKER: Yes.

MR. ROONEY: So that's where that language came from that's in the proposal.

MS. RICKER: So the statute takes away
the general education teacher's right to get training and just has an expectation now of knowing?

MR. ROONEY: So I think -- I would describe it as the state -- if you look at Roman Numeral V in the statute, it describes in the state plan than general education and special education teachers and staff know how to administer the assessment. I think the way that could be operationalized, but --

MS. RICKER: It could, but it won't.

MR. ROONEY: We're open to proposals if you have language to clarify this.

MS. RICKER: Ok, yes.

MR. HAGER: We won't disagree on anything about training.

MS. RICKER: You can move on if you want to.

MS. PODZIBA: We've got about five minutes so you could also bring it back in the morning, if that's easier.
There was no one that signed up for a public comment. Is there anyone in the audience who would like to address the committee at this time?

Ok, so we'll give you some time overnight to do that.

Are there any other items on -- yes Patrick.

MR. ROONEY: So there's one other thing, this is not tangential, but I wanted to flag it for this group. If you look at the full package in 200.2B(3), I think its line Page 2 line -- starting On Line 4.

MR. HAGER: Page 2.

MR. ROONEY: The full package of the regulation, Page 2, starting On Line 4 --

MS. BRIGGS: Clean or tracked?

MR. ROONEY: The tracked version.

Thank you. Good clarification.

So this is the component in 200.2 which describes that states have the general
requirements for their assessment systems, state responsibilities for assessments, and under three, this is about the state making sure the assessments are aligned with the state's challenging academic standards, and specifically that the assessments that feed into this measure the breath and depth of those standards, and then you get to this number two.

So with respect to alternate assessments for students with the most significant cognitive disabilities, they measure student performance based on alternate achievement standards defined by the state consistent with \(1111\text{B}(1)(e)\) of the act that reflect professional judgement as to the highest possible standards achievable as such standards by such students to ensure that a student who meets the alternate achievement standards is not tracked to pursue a post-secondary education or a competitive integrated employment consistent with the purposes of the Rehabilitation Act of 1973".
I'm sorry I read that whole thing, but I wanted to kind of lay it out.

The statute where this comes from, this section talks about if states design these alternate achievement standards and assessments, align those alternate achievement standards, they need to make sure they're on track to pursue post-secondary education or employment consistent with -- and they reference Public Law 93212, and that's the Rehabilitation Act, and I think that rather than just repeating the Rehabilitation Act, we actually clarified that the reference to the Rehabilitation Act in 1973 is talking about competitive integrative employment, that that is the purpose, that the assessment system should be aligned to.

I just wanted to flag that that is a clarification, that when we talk about the Rehabilitation Act in the statute, that we are now clarifying that in our regulation to say that they should be checking to be sure that they're on
track to pursue post-secondary education or
competitive integrative employment.

I wanted to flag that as it relates to
the 200.6 discussion that we were just having, to
know it's not captured in that component of the
regulations of the package.

MS. PODZIBA: Ron.

MR. HAGER: This is consistent with our
discussion last time, about -- we had said make
more explicit the reference to this provision in
the law, it's there. But basically it's what we
had asked you to do the last time.

MR. ROONEY: That's correct. We did
talk about this in the last discussion about the
statute referenced Public Law 93212 and trying to
clarify it, we then further clarified it from the
last discussion for what you see in what we
proposed for you for this discussion by
clarifying
that we need competitive integrated employment.

MS. PODZIBA: Tom?

MR. AHART: Would it be possible for us
to see that section of the rehabilitation act to see the reference, maybe tomorrow?

MR. ROONEY: We'll provide that tomorrow.

MS. PODZIBA: Lisa?

MS. MACK: I just had questions on Page 2. I'm just having trouble following. We go like Line 4 is number two, but the next marking is on Line 15, ii romanette.

I mean, is there like a number three some place or like an i? I don't know if something is missing or if I'm just missing something.

MR. ROONEY: No, this is the funkiness of regulations. So if you turn back to Page 1, Line 37, Number 3 is the lead-in for all of this.

And then romanette i, indent Number 3, and then romanette i you have A, which is on Line 41, which has a one and a two, are underlined, and then you've got a B. So A and B are the same on a level underneath romanette I. And then under B,
on Line 44, you've got a one, and then underlined.

Part B is the stem.

And then you go down to Line 15,

romanette two.

MS. MACK: Thank you.

MS. PODZIBA: So, it's 5:00 o'clock and

I just want to summarize where we are on Issue

Paper 4A.

Outstanding is on Page 2, paragraph 3,

which Kay is going to check on some questions

related to, we made some changes --

MR. RUELAS: If you can go back to the

three, where it says "students eligible for".

MS. PODZIBA: Right. That's the

question that Kay's going to take back.

MR. RUELAS: Ok. I just wanted to know

why we had changed the wording of that again. So

she's going to find that out.

MS. PODZIBA: Yeah. Kay will come back

on that.

I think there are also remaining
questions about that whole paragraph, how that gets broken out. So we'll come back to that.

There is a question on Page 3(2), romanette i, about whether or not that's a place to mention that parents get that information in a language in which they can understand.

Similarly that question comes up on Page 5 Number 3, paragraph 3, and then there is a question about training that Mary Cathryn will get back to us tomorrow, and then we'll pick up at paragraph E, definition of student with disabilities. Ok?

We're all on the same pages. So have a nice evening.

Ron, did you have a comment before we broke.

MR. HAGER: E is really 5B? E(1) is the definition? Should we just -- are you going to wrap that into 4B, or you just want to have it separately here?

MR. ROONEY: So I do think we want to
talk about it, so we can talk about it and then it be a nice transition into 4B.

I appreciate everyone's patience today.

(Whereupon the meeting was adjourned until Thursday, April 7, 2016, at 9:00 a.m.)
CERTIFICATE OF NOTARY PUBLIC

I, KIM M. BRANTLEY, the officer before whom the foregoing meeting was taken, do hereby, certify that the proceedings were taken by me in stenotype and thereafter reduced to typewriting under my direction; that said meeting is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this meeting was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIM M. BRANTLEY
Notary Public in and for the District of Columbia

My commission expires: October 31, 2019
| A(1) | 252:14,20 |
| A(1)(i)(b) | 66:8 |
| A(2) | 283:16 324:3 |
| A(3) | 252:15,21 |
| 275:9 283:16 |
| 287:4,5 |
| A(3)(1) | 287:4 |
| a.m | 1:10 373:5 |
| aa | 364:7,17 |
| Aaron | 3:2 6:90:4 |
| 91:15 96:17 97:2 |
| 101:15 117:4 |
| 139:5 146:3 |
| 152:14 158:21 |
| 161:5,6 169:10 |
| 171:14 209:3 |
| 223:18 238:13 |
| 256:4 267:8 |
| 348:11 |
| Aaron’s | 95:1996:1 |
| 105:2 327:5 |
| ability | 43:17 81:15 |
| 81:21 82:17 86:2 |
| 229:12 |
| able | 4:5 67:15 |
| 68:12 83:6 105:10 |
| 132:16 168:18 |
| 181:7 186:6 |
| 226:11 269:17 |
| 300:14 305:5 |
| 345:13 |
| absolutely | 149:11 |
| 214:7 220:13 |
| 245:7 |
| abused | 278:8 |
| academic | 35:141:7 |
| 41:20 44:8 47:13 |
| 62:16 112:3 119:8 |
| 148:7 153:13 |
| 154:7 180:17 |
| 197:15,20 198:3 |
| 198:10,15 199:5 |
| 199:12 210:5,13 |
| 210:15,18 211:15 |
| 218:10 254:19 |
| 311:20 312:6 |
| 313:10,13,17 |
| 314:10,16 317:2 |
| 318:2,7,8,12,13 |
| 318:16,17 319:1 |
| 319:11,18 321:3 |
| 321:15 323:3 |
| 332:5,9 333:12 |
| 335:13 352:15 |
| 356:3 357:19 |
| 358:14 367:5 |
| academics | 193:4 |
| academics | 229:2 |
| accede | 341:3 |
| accept | 174:13 |
| acceptable | 27:14 |
| 216:6 234:17 |
| 238:7,9,11 |
| accepted | 58:21 |
| 65:12 237:14 |
| 239:19 |
| access | 79:5 86:1 |
| 89:7 105:10,14 |
| 118:4 173:5,13 |
| 331:14 |
| accessibility | 252:1 |
| accessible | 126:1,2 |
| 185:1 |
| accommodate | 183:12 344:8 |
| accommodating | 114:13 231:11 |
| 276:2,3 |
| accommodating | 170:7 184:1 262:3 |
| accommodation | 123:18,19,21 |
| 124:5 127:16 |
| 129:6 173:5,6 |
| 187:13 189:16 |
| 264:2 266:11 |
| 310:20 311:1,17 |
| 311:20 312:6 |
| 313:10,13,17 |
| 314:10,16 317:2 |
| 318:2,7,8,12,13 |
| 318:16,17 319:1 |
| 319:11,18 321:3 |
| 321:15 323:3 |
| 332:5,9 333:12 |
| 335:13 352:15 |
| 356:3 357:19 |
| 358:14 367:5 |
| academics | 193:4 |
| academics | 229:2 |
| accede | 341:3 |
| accept | 174:13 |
| acceptable | 27:14 |
| 216:6 234:17 |
| 238:7,9,11 |
| accepted | 58:21 |
| 65:12 237:14 |
| 239:19 |
| access | 79:5 86:1 |
| 89:7 105:10,14 |
| 118:4 173:5,13 |
| 331:14 |
| accessibility | 252:1 |
| accessible | 126:1,2 |
| 185:1 |
| accommodate | 183:12 344:8 |
| accommodating | 114:13 231:11 |
| 276:2,3 |
| accommodating | 170:7 184:1 262:3 |
| accommodation | 123:18,19,21 |
| 124:5 127:16 |
| 129:6 173:5,6 |
| 187:13 189:16 |
| 264:2 266:11 |
| 310:20 311:1,17 |
| 311:20 312:6 |
| 313:10,13,17 |
| 314:10,16 317:2 |
| 318:2,7,8,12,13 |
| 318:16,17 319:1 |
| 319:11,18 321:3 |
| 321:15 323:3 |
| 332:5,9 333:12 |
| 335:13 352:15 |
| 356:3 357:19 |
| 358:14 367:5 |
| academics | 193:4 |
| academics | 229:2 |
| accede | 341:3 |
| accept | 174:13 |
| acceptable | 27:14 |
| 216:6 234:17 |
| 238:7,9,11 |
| accepted | 58:21 |
| 65:12 237:14 |
| 239:19 |
| access | 79:5 86:1 |
| 89:7 105:10,14 |
| 118:4 173:5,13 |
| 331:14 |
| accessibility | 252:1 |
| accessible | 126:1,2 |
| 185:1 |
| accommodate | 183:12 344:8 |
| accommodating | 114:13 231:11 |
| 276:2,3 |
| accommodating | 170:7 184:1 262:3 |
| accommodation | 123:18,19,21 |
| 124:5 127:16 |
| 129:6 173:5,6 |
| 187:13 189:16 |
| 264:2 266:11 |
| 310:20 311:1,17 |
| 311:20 312:6 |
| 313:10,13,17 |
| 314:10,16 317:2 |
| 318:2,7,8,12,13 |
| 318:16,17 319:1 |
| 319:11,18 321:3 |
| 321:15 323:3 |
| 332:5,9 333:12 |
| 335:13 352:15 |
| 356:3 357:19 |
| 358:14 367:5 |

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department strongly cautions that the transcript should not be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

Page 375
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. The transcript is intended to serve as a resource that could be used to produce a more accurate transcript.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
| 230:4,5 231:20 | 191:10,12 192:3 | 334:2 342:1,1 |
| 240:19 250:14 | 193:4,9 197:12,15 | assurance 259:11 |
| 253:8,15 254:13 | 197:20,21 198:3 | assure 153:10 |
| 254:15,17,18 | 198:10,16,21 | attainment 257:4 |
| 263:3,10,18 | 200:12 201:2 | 144:13 226:8 |
| 267:14 272:14 | 210:17 211:6,10 | 236:10 245:11 |
| 274:18 275:16 | 183:5,14 184:4,9 | 211:13 |
| 292:17 301:6 | | 215:16 216:4 |
| 311:6,6,17 313:12 | | 218:14,16 221:13 |
| 313:14,16,16 | | 222:6 223:11 |
| 314:11 315:8,13 | | 226:9 227:12 |
| 315:16 316:6,7,14 | | 228:14 230:9 |
| 316:16,20,21,21 | | 250:3 251:1,3,5 |
| 317:1,7 318:21 | | 251:14,16,17 |
| 319:6 328:7 331:8 | | 252:11 260:8,12 |
| 331:17,19 332:1,4 | | 260:18 263:17 |
| 332:8,16,18 | | 266:10 275:14 |
| 333:11 334:15,17 | | 276:13 278:18 |
| 335:1,3,5,7,11,12 | | 292:1 299:21 |
| 342:17,19 343:1,3 | | 313:21 318:3 |
| 343:4,8,21 344:1 | | 320:2,3,6,8 325:6 |
| 344:2,11,12,13 | | 325:10 330:11,15 |
| 345:5,11,18 349:6 | | 331:10 332:12 |
| 349:10 352:14 | | 333:3,14 334:16 |
| 357:12,15,18 | | 336:12 338:14 |
| 358:4 360:4 365:9 | | 344:20 345:1,3 |
| 367:1 368:15 | | 353:16 356:19 |
| assessments 1:6 | | 357:3,5,7,9,9,11 |
| 30:4,5,16,16 | | 358:18 359:14,20 |
| 64:18,21 65:6 | | 364:6 367:2,4,6 |
| 69:9 70:10 71:21 | | 367:10 368:5 |
| 81:2 90:1 112:4 | | assimilation 141:2 |
| 112:13 113:12 | | 224:5,11 |
| 115:21 118:14,20 | | assist 150:17 |
| 119:8 121:20 | | 189:18 |
| 123:10,11 125:18 | | assistance 6:15 |
| 132:5 143:6,8,13 | | 310:19 |
| 143:18 148:6,7,11 | | Assistant 3:12 |
| 154:16 155:2 | | assisted 43:19 |
| 162:3 164:16 | | assisting 322:21 |
| 165:8 167:12 | | assume 36:2,50:9 |
| 168:19 173:4,9 | | 78:5 99:9 100:7 |
| 177:5,10 181:8,12 | | 100:10 307:5 |
| 181:18 182:6,21 | | assumed 197:16 |
| 193:4 203:11 | | Ave 1:3 |
| 249:9 259:3 | | avoid 10:6 |
| 303:14 304:19 | | avoids 16:7 |
| 326:12,14 | | assuming 329:10 |
| and | | assumption 89:11 |
| 89:15 198:16 | | attempted 360:5 |
| attend 219:13 | | attended 233:17,21 |
| 234:3 | | attending 218:10 |
| 343:9 | | attention 14:20 |
| 20:19 112:16 | | attorney 374:11 |
| audience 134:11 | | 366:2 |
| Audrey 2:17 18:8 | | 69:18 70:13 85:4 |
| 144:18 195:19 | | 200:5 243:20 |
| 266:19 269:21 | | 297:3,18 329:6 |
| Audrey's 4:3 133:6 | | 147:8 164:10 |
| 297:15 | | authority 88:4 |
| 215:9 216:15 | | 271:3 |
| authorization | | authorized 217:8 |
| 218:2 | | automatic 76:21 |
| automatically | | 76:17 |
| 76:17 | | autonomy 149:6 |
| avail 93:19 | | availability 173:3,8 |
| 331:13 | | available 13:251:7 |
| 71:20 74:5 79:3 | | 81:8,18 83:5 |
| 115:13,15,18 | | 120:20 121:21 |
| 122:13,14 126:9 | | 132:3 137:15,15 |
| 308:16 309:9 | | 312:3,7,15,21 |
| 314:6 330:8 | | 339:12 341:3 |
| 347:20 349:2,14 | | 349:18 362:2,13 |
| 269:12 | | attempting 360:5 |
| DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking. | |
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
bilingualism

... makes such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

disclaimer: this transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. the department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. unfortunately, the department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. consequently, the department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking. Consequently, the Department is making this transcript public, although the errors may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available but clearly, the transcript is not a verbatim record of the negotiations.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
contemplate 81:5
contemplating 81:5
content 27:3 144:4
144:15 153:13
154:7,17 173:13
180:18 189:3
209:7
210:5,13,18
211:16 216:8,8
218:10 251:1,5
254:19 261:18
263:18,19
311:19
313:5 314:14
316:10 317:8,13
318:5,9
319:13,19
320:8,14 321:18
321:21
333:12,16
357:19 358:5,14
context 16:12 228:1
57:5 116:16 207:9
208:18 215:10
216:1,10
contexts 94:17
contextually 209:6
contingent 228:18
continue 203:6
239:1
242:15
296:18 334:2,4
360:18
CONTINUED 3:1
continues 147:11
242:19
continuous 174:21
contradicts 186:3
contravene 65:19
contribute 16:11
85:21
control 87:19 88:4
controversy 9:16
convene 203:15
convenient 292:20
conversation 8:11

copies 25:3
copy 120:19 156:4
correct 80:10
138:18 212:13
234:15,15 235:5
340:18 369:13
corrected 18:19
225:7
correctly 34:3
69:12 93:9 186:20
207:17 266:14
correlated 87:1
correlates 53:16
55:3,4
correlation 40:21
42:5
corresponding 156:2

cost 147:13
Council 90:7
counsel 3:13 19:10
19:11 374:8,11
17:2 173:17
186:4
240:18 253:13
254:6
333:13
356:20
conversations 248:1 357:1
coordinations 140:3

course 67:4
course-taking 81:2
courses 26:20 46:12
54:5,7 55:7 70:2
81:8 83:1,6 87:2
97:6 100:9
court 1:20 140:8
cover 123:5 6124:5
254:20 324:10,11
covered 33:14,19
35:19 76:6 121:16
131:7 132:18
credited 53:17
criteria 76:17 115:6
115:8 116:6,11
118:13 121:16
142:20 143:7,9,16
143:17,20 167:21
173:18 174:2,3
191:7 194:10
202:11 207:6
249:11 328:17
criteria 177:2
critical 93:15,21
94:4 150:11
cropping 201:15
cross 151:19 152:4
155:7,8
cross-reference 77:6 159:2 274:1

cross-references 23:5
cross-referencing 29:19
count 43:2,5 55:2
counter 104:5
counterproposal
counting 349:11
country 5:1 140:19
couple 5:17 16:20

course 11:3 16:12

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Consequently, the Department is making this transcript publicly available, despite the errors, consistent with the Department’s policy of making such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
...disagreement...make such a transcript available; but the Department cau...errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Depar...dissent...dispute...disparities...discussions...drivers...drive...drafting...doors...earlier...ear...

disability...discs...discrimination...discuss...disparities...dispense...dispute...disseminate...dissent...discussion...disseminating...dissent...discussing...discussion...disagree...disagreeing...disagreement...disclosure...discretion...discredited...discriminating...dissertation...dissection...disassemble...dissect...disagreement...disagree...disability...
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. The Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Statements made during negotiated rulemaking.

transcript. Correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to encourage its employees to participate in the rulemaking process. Unfortunately, the Department is unable to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
guar

grew

guardrail

group

group's

245:1
145:14,16
344:17
340:15,20
334:20
372:17
Hakuta 3:9 21:2
113:3
half 5:11 100:1,1
273:13 276:16
362:3
halfway 156:14
handled 345:20
hang 187:20 293:21
happen 65:4 98:12
101:2,3 110:8
186:4 197:2
226:18 237:5
239:12 241:6
271:5 300:1,16
306:1
happened 235:7
331:16 354:9
having 65:4
89:12 94:7 200:11
happens 235:13
333:18
happy 136:2 174:7
174:8 180:5,8
254:1 259:5 308:2
320:16 321:1,5
349:1,14,18
353:11
hard 60:14 84:16
116:1 188:11
189:2,17 227:11
231:16 245:3
300:15 302:11
312:2 330:3
harder 145:11
Harper 3:3 4:15,17
142:5 151:2
155:17 158:2,5,10
159:13,17 160:14
211:20 212:1
213:4,13 216:12
219:12 221:14
266:3,15
hat 246:17
hate 50:20 62:21
89:13
Hawaii 157:13
159:10 218:17
Hawaiian 152:3
157:13 171:1
229:16 230:1
Hawaiians 229:19

HAWELEY 3:10
head 236:12 279:21
header 198:8
hear 36:18 95:18
95:21 134:12
136:4 167:3
183:18 185:17
190:11 207:17
255:9 272:2
276:14 277:6
297:15 320:11
heard 5:9,13,21
57:12 112:11,19
116:19 124:3
173:7 235:18
250:9 297:13
321:21 346:2
hearing 101:5
188:11 189:2,17
201:18 202:14,15
heavily 322:17
hedging 199:2
help 5:1,18 6:5,6
8:12 15:18 19:12
19:16 20:1 23:12
24:9 38:7 60:4
79:17 82:15 87:10
87:11 95:17 98:3
131:14 172:19
193:10 205:17
237:20 267:9
288:19 292:15
342:11 345:12
helped 17:13
helpful 5:21 26:1
28:11 32:7 41:8
44:4 48:14 89:19
307:19 343:6
helping 4:19
helps 19:4 51:9
75:7 193:21 293:3
293:9
hereto 374:12
Hey 168:4,14
Hi 121:13
high 27:8,10,13
28:15 29:1,3
30:20,21 34:20
35:14,15,17 36:4
36:6 38:17 39:7
39:11,15,17 41:6
41:19 43:1 44:8
45:1 46:4,16 47:2
47:3,5,12 48:3,4
48:12 50:17 53:3
53:13 54:2,9,12
54:14 55:15,17,18
55:19 56:1,4,15
59:17 60:21 61:5
62:16 63:18,19
64:15,21 65:11
66:7,10,14,15,20
67:4,14,20 68:3,6
69:4 70:16,17
71:1,11,17,21
72:4,6,12,16 74:7
74:14,19 75:14
76:2,9,18 80:14
80:15 99:19
101:20 105:21
138:10 199:6
349:5 359:21
360:6 363:5,11
364:1
high-achieving 335:2 342:21
345:10
high-level 12:14
high-school 50:10
high-school-level 72:10,12
higher 27:10,10
30:21 40:16 42:13
67:3 68:4 80:17

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors during transcription, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cannot produce a verbatim transcript, nor can it make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
the vast majority of these errors because there is no recording or other reliable source to correct the vast majority of these errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Of errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department is not responsible for, and disclaims any liability with respect to, any errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. The Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to
make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the
subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiating rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to
correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate
transcript. Conversely, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of
statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with the Department’s policy to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
**DISCLAIMER:** This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
package 32:6,8
34:1 135:14 136:5
172:9 251:11,19
252:6,8 253:5
255:14 257:16
258:16,18 336:10
366:12,15 369:6
packages 238:9
packet 354:15
page 28:18 29:13
30:1 31:19 32:3,5
32:14,18,21,21
33:4,6 34:4 40:6
77:10,18 78:9
109:11 113:15
116:1,3 117:15
119:3,4 135:15
136:8 146:11
148:5 151:18
156:2,14 163:10
169:2,2 179:14,17
180:11 181:5
188:5,5,18 194:21
198:8 210:3,11
211:2,3,6,7 212:2
212:3 230:20
233:16 238:12
251:12,13 252:5
253:5,20,20
255:14 257:2,8,9
257:16 258:17,19
273:11,12 275:10
275:11,11 276:16
277:4,4,7,11
278:13 303:6
312:11 322:11
325:1 326:17
330:8 331:1 332:7
332:2 334:9 336:7
336:7,10,11 352:8
352:10,11 353:10
354:13,14,16,18
354:20 356:14,16
359:4,8,17 360:10
361:6,8,19 362:2
362:4,6 363:17,18
364:4,5,6,7,8,9,14
371:9 372:3,8
pages 156:2 302:6
324:19 361:3
372:13
palatable 236:8
paper 16:21 17:4
18:2 20:7 18:21 26:6
22:6,13 23:1,2,7,8
23:11,15 24:11,10
24:10,11,12 25:12
25:14,20,21 26:3
26:6,8,13 29:4,6
29:21 31:14,19
32:18 33:1,10,12
33:18 34:4 109:18
110:4 111:19
113:15 134:2
155:20 156:11
178:18 179:1,5,16
179:21 180:9
198:4 203:5,6
231:19,21 250:2,5
251:20 257:10
259:9 271:9 272:6
273:4,5,11 275:5
275:21 330:9,14
330:21 334:7
354:17,19 355:6
356:17 358:9
362:2 371:8
papers 17:6,17 18:3
19:16 20:21 22:18
22:21 23:6 24:18
25:1,11,18,20
231:1
paperwork 83:15
86:10
par 140:3,7,12
paraeducator 300:11
paragraph 78:7,8,8
96:3,18 109:18
111:4 129:19
131:11 139:17
152:9 155:4 163:4
172:11 177:19
178:3,8 179:12
235:1 274:10
275:12 277:12
287:4 323:18
325:2 326:17
336:8,12,13
356:14 371:9
372:1,8,11
paragraphs 155:14
parallel 57:375:12
90:5 163:14 283:9
284:21
paraprofessionals 302:12
parent 202:9
parents 167:8
201:19 202:4,12
259:4,13 271:11
285:7,8 297:7
298:2 303:14,16
304:4,10,21
305:10,12 306:3,6
306:11 307:17,20
352:9,13 363:18
372:5
PARKER 2:14
parking 21:11,21
part 16:21 19:30:7
30:9 40:9 48:5
56:11,21 67:5
72:21 89:4,5,20
89:20 101:20
106:4 144:20
145:5,14 155:6
162:17 164:21
165:15 192:2
197:8 198:4,14
199:7 89:200:14
211:4 217:7,8
221:11 229:6
240:15 241:21
244:5 245:3,4,13
246:5 247:2
249:16 255:21
257:16 260:13
261:17 263:9
270:10 273:14
279:6 281:18
336:3 352:17
353:18 356:2
371:2
participants 12:16
participate 168:18
253:18 278:18
participated 329:5
participating 144:7
147:21 153:15
167:11 206:5
359:14
participation 167:18 230:21
360:19 363:9,20
particular 14:18
21:16 28:10 40:9
94:10 95:9 101:12
105:8 131:12
138:4 143:1
176:10 180:6
258:4 277:19
279:11 298:8
304:16 342:17
343:2
particularly 14:16
17:3 41:8 44:3
112:16 175:12
260:7 326:3 345:4
345:9
parties 374:9,12
partly 281:19
pass 14:14 54:1
169:9 171:11
216:7
passed 234:4 268:9
299:18 331:6
passes 11:20
pathway 108:2
patience 373:3
patient 303:2
Patrick 2:3 4:79:2
16:16 31:9 32:7
51:7 77:20 78:4
96:21 101:4 104:4
104:7 111:8
121:13 125:13
131:5 144:20

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with applicable law and regulations.

Statements made during negotiated rulemaking.

transcript.

The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with applicable law and regulations.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with applicable law and regulations.

statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
primary 207:12 349:17
primer 139:7
principal 62:10 226:7,350:21
Principally 157:6
principals 119:13 327:15,20,21 329:1 331:15
print 194:21
prior 113:6 141:1
priorities 8:6 219:1
prioritize 153:3
prioritizing 219:2
priority 69:7 154:14 242:11,13 265:16
privilege 85:9,10
problematic 84:19 194:19 208:15 278:10 306:5
problems 228:13 307:21
proceed 248:6
processed 277:21
processes 277:16
prod 191:15
producing 153:5
product 239:16
productive 8:10 10:10
professional 27:14 120:2 242:10 367:14
professor 246:16
proficient 304:10 315:12,19
proactively 145:10
progress 218:20 327:13
progressive 91:12
91:13
prohibit 355:3
prohibiting 276:9
prohibition 355:14
promote 98:18 102:13 278:16 303:9
promotes 102:18
promoting 91:8 98:9 102:15,19
promotional 103:14
prompts 87:9
proof 218:14
proper 104:13 209:9
properly 247:13
proscribe 127:21
protect 15:11 267:3 290:13
protected 152:7 289:20,21
protections 151:13 294:15
protocol 9:9
protocols 13:12,13 90:16
prove 85:20
proved 195:11
proven 217:3
provide 24:9 27:18 71:3,16 76:5
proving 90:18
provision 61:10 64:20 74:15 110:15 120:6

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to distribution, and other purposes that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to distribution, and other purposes that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Consequently, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcription. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Therefore, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of the negotiations during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Therefore, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of the negotiations during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department makes this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cannot guarantee the truth and reliability of the transcript as a verbatim record of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
...somewhat and that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with...
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the contractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. The Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
| Page 429 |
|---|---|---|---|---|---|
| 254:11 | **stomach** 195:5 | **structure** 47:18 |
| **statute** 17:20 18:13 | **stop** 40:3 113:18 | 117:13 150:6 | **structured** 289:17 |
| 175:1 276:11 | **struggle** 351:18 |
| **stopped** 150:7 | **struggling** 346:1 |
| **stopping** 31:3 | 349:9 351:17 |
students' 183:15
studied 12:10
studies 46:2
study 266:8
studying 217:13
stuff 356:6
sub 37:1276:14
277:6286:16
340:11353:19
sub-issue 11:11
subcommittee 10:14272:8,10
272:16276:20
326:20329:4
330:3
subette 75:14
subgroup 125:4
subgroups 85:8
subject 146:6
251:14266:8,6
295:8
subject-specific 37:6,6
subjected 251:3
sublet 284:5,7
submit 29:830:3
39:6,16196:8,11
196:18
submitting 38:17
subordinate 140:1
subsequent 356:21
subset 73:18274:7
substance 239:7
substantiate 94:15
substantive 150:13
226:1
substitute 103:13
substituted 102:16
successful 42:14
149:21245:3
sufficient 168:12
sufficiently 197:16
suggest 43:2194:8
136:14195:17
283:71381:20
suggested 309:5
suggesting 134:15
134:16156:17
218:6309:3
suggestion 17:7
109:13137:14
238:14324:11
340:9353:10
suggestions 8:20
30:1131:1343:15
suggests 95:10
310:16
sum 109:8
summarize 234:14
371:7
summary 9:2012:7
12:7,12,1513:15
13:17327:1
198:14200:17
superfluous 256:18
superintendent 224:7242:11
238:17241:20
supersede 292:11
253:1255:12
supervise 302:12
257:2258:8259:6
Supplant 1:721:5
Supplement 1:7
21:5
271:5275:2,21
supplemental 120:13153:9
276:8283:11
306:12301:8
supplements 302:17304:6
301:17
supposed 284:14
305:1321341:13
sure 8:1,199:11
18:11276:13,17
41:942:244:3
59:86821:70:2
76:112082:15
89:15938104:8
105:1106:7
108:14112:12
119:1521124:1
125:21126:4
129:12133:1
141:19416:14
147:814155:19
157:1921158:21
162:4163:12
164:21701:18
176:19180:12
181:12182:11
192:19193:19
198:14200:17
229:1230:15
231:10234:13
238:17241:20
253:1255:12
257:2258:8259:6
262:17264:10
265:18266:14
271:5275:2,21
276:8283:11
296:12301:8
302:17304:6
301:17
306:15307:18,20

# DISCLAIMER:
This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking.

Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
tried 6:8 10:8 17:11
30:15 101:7
103:12 117:8
143:19 20 144:3
236:7 249:6,11,13
252:1 273:19
274:12,17 364:2
tries 100:3

triggers 207:3
trigonometry 54:3
58:2
trouble 32:1 188:12
189:3,10 370:7

trucks 203:12
true 46:6,19 67:6
95:11 316:2 374:6

try 7:20 8:3,7,17
11:13 19:16 21:12
21:13 22:2 23:9
23:13 55:9 63:3
65:15 66:3 70:12
91:17 98:14
113:16 116:18
118:11 128:6
144:10,14 163:2
226:19 228:11
257:21 259:6
269:11,12,15
289:3 301:20
302:7,7 308:18
321:12

trying 5:12 6:11,17
8:1,16 14:9 15:12
16:12 18:15 36:15
44:13 50:2 51:12
53:6 54:16 60:13
81:10 84:4 98:17
123:16 142:19
161:7 165:18
172:5 185:14
206:19 207:10
218:15 225:3
241:10 247:19
249:18 263:16
273:15 281:16
282:8 285:5
288:14,17,19

355:8 369:15
363:13

tune 175:10
14:8 21:16 312:21
370:15
twelfth 54:21
twelve 47:10
136:18
twenty 151:18
twice 317:15
two 4:11 5:7 16:21
18:2 22:6 23:3
24:11 25:21 26:8
126:5 27:5 28:6
31:14 32:6 33:1
44:5 46:16 57:3
64:21 106:2,9
121:17 124:17
125:3 129:7
133:21 135:7
171:3,3 175:18
181:20 182:1
195:20 200:10
201:5,6 212:4
213:8 221:15
234:7 235:3
245:19 254:9
256:11 261:7
271:10 274:6
282:5 287:5,10
303:7 308:20
318:14 320:4
324:21 329:2
330:17 331:17
332:11 356:21
359:8 361:20
367:8 370:8,19
371:4
two-thirds 28:18
type 70:7 122:7,8
typed 171:12
types 6:11 121:17
121:21 290:12,15
300:3
typewriting 374:5
typical 22:8 268:20
300:4 305:1

357:2
363:13
understood 80:7
266:14 348:13
undoing 226:2
undue 168:8
unenviable 99:18
unfortunately 240:15 301:12
uniform 250:12,13
263:3
unintended 49:21
66:1 88:11
unintentionally 142:10
unique 126:15
154:19,20 294:13
United 157:3 165:2
205:10 234:6
Universal 189:9,10
18:12 119:13
331:15
University 246:18
unnecessarily 157:20
unnecessary 28:9
unquote 283:1
unused 278:9
update 20:11
196:14
updated 18:11
258:17
updates 18:4
upgraded 333:18
upper 323:18
use 7:17 25:5 45:1
58:13 59:10,19
62:13 63:15,17
64:14,17 67:15
68:6,14 72:3,17
73:7 77:2 99:12
99:14 114:14
116:11 118:1
143:17 180:16,17
205:4 210:16
215:16 221:12
221:8 232:10
234:10 238:19
249:12 257:20

278:16 279:1,4
285:12 296:15,19
303:9 310:1 320:2
336:19 338:7,8,17
356:2 364:2
useful 316:18
uses 105:20 336:21
336:21 337:7,9,10
337:12,19
usual 10:16
usually 229:2

v 253:6,19,20 255:3
364:7,16 365:6
vague 131:2
valid 76:4 112:13
119:12,15 120:1
126:21 184:13
211:9 215:6 219:2
336:19,21 337:5
337:15,20 338:4,9
338:18 339:1,6
340:3,16,19 346:9
347:16,19 348:3
348:16 349:16
351:2
validity 118:15
200:15 201:1
214:21 260:18
valuable 334:19
value 57:9 351:14
varied 145:16
vary 112:21 126:11
vast 331:18
vein 244:20
verb 205:12,14
207:18
verbs 205:19
Vermont 197:7
version 22:9,9,11
22:14 24:13,13,14
25:7,7 29:21 32:3
32:16 67:19
119:20 135:14
156:7 212:3 250:5
250:7 251:12

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
within-grade 316:21
wonder 37:10
107:17 126:19
127:5 133:2 159:2
287:19 314:21
wondering 9:15
59:15 77:14 82:9
89:8 98:4 104:4,7
125:2,5 130:13
141:18 144:20
180:12 345:19
354:3
word 91:3 92:15
93:21 104:8,11
190:5 191:1
192:20 205:3
222:21 233:17,19
234:3 236:14,14
308:21 315:2
337:13 350:15,19
350:21 355:16
356:4
worded 348:2
wording 37:10
336:20 343:15
371:17
words 36:18 57:4
73:1 95:4 122:21
192:15 222:21
239:13 246:6
256:8,11 311:1
321:4,11 337:4
343:12
work 4:20:6
16
14:11 29:19 37:11
38:3 43:17 45:11
53:10 77:13 78:12
84:2 86:13,17
89:21 91:6 92:1
341:6 347:12
348:10
workbook 217:19
workbooks 230:8
worked 149:18
150:7 217:20
working 8:17 14:7
90:6 105:16
152:16 153:6
154:12,12 174:20
219:14,15 245:2
267:14 300:10
312:20 330:3
works 10:1 267:19
314:3 341:1
world 316:13
worried 64:19 65:3
310:9 320:18
worry 106:19
148:14 307:8
worse 225:17
worth 180:4 209:2
243:14
worthy 241:9 242:3
wouldn't 46:11
71:11 73:20
135:10 183:6
185:6 186:16
209:5 239:18
270:7
wrap 236:12
372:19
write 15:20
writing 89:14 150:4
268:8
written 56:21 71:3
132:12 178:8
214:10 217:3
280:8 291:18
360:18
43:12 47:15 48:17
56:9 60:12 65:17
73:20 91:17
110:11 129:11
158:4 159:9
182:11 200:3
212:14,16 223:1
235:21 236:19
240:5 245:12
257:9 270:6
282:11 286:9
287:6 296:11
308:20 311:15
313:2 322:2
326:10 329:12
336:14 337:13
343:18 371:19
year 44:18 148:7
164:14 165:3
196:3 302:9
yearly 193:3 196:1
196:4,5
years 149:17,17
152:16 162:14
164:14 173:20
185:12 212:9
268:1,1,1,5,10
301:3 331:17
354:9 363:8
yield 211:14
York 53:8 62:9
71:7 306:2
young 150:2
Yup 179:6
Yupik 121:8
Z
Z 88:3
Z 0
---

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
| 294:1 295:1 296:1 | 56:10 57:10 58:10 | 168:10 169:10 | 266:10 267:10 | 364:10 365:10 |

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
statements made during negotiated rulemaking.

correct the vast majority of these errors because there is no recording or other reliable so
errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Depar
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department cannot ensure that this transcript is reliable enough to be used as a verbatim record of the statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.

DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Statements made during negotiated rulemaking. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
Correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including errors in transcription, errors in attribution, and other errors that may not accurately reflect the content of the statements made during negotiated rulemaking. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available; but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.
DISCLAIMER: This transcript was produced under a contract by an independent subcontractor, and is solely the work product of the subcontractor. The Department has determined that the transcript contains errors, including typographical errors, errors in attribution, and other errors that may not accurately reflect the content of the negotiations during negotiated rulemaking. Unfortunately, the Department is unable to correct the vast majority of these errors because there is no recording or other reliable source that could be used to produce a more accurate transcript. Consequently, the Department is making this transcript publicly available, despite the errors, consistent with its prior commitment to make such a transcript available, but the Department cautions that in no case should it be relied upon for purposes of verbatim citation of statements made during negotiated rulemaking.