Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 7, 2016

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

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U.S. DEPARTMENT OF EDUCATION

Negotiated Rulemaking

400 Maryland Ave. SW
Washington, DC

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

Washington, DC
April 7, 2016 9:10 a.m.

Court Reporter:

Kim M. Brantley, C.S.R.

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NEGOTIATED RULEMAKING COMMITTEE:

SUSAN PODZIBA, Facilitator

PATRICK ROONEY, Moderator

KAY RIGLING

DELIA POMPA

JANEL GEORGE

LIZ KING

RON HAGER

MARCUS CHEEKS

TONY EVERE

LYNN GOSS

REGINA GOINGS

RICHARD POHLMAN

ERIC PARKER

LARA EVANGELISTA

MARY CATHRYN RICKER

AUDREY JACKSON

RYAN RUELAS

KERRI BRIGGS

LISA MACK

RITA PIN AHRENS

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NEGOTIATED RULEMAKING COMMITTEE CONTINUED:

AQUEELHA JAMES

AARON PAYMENT

LESLIE HARPER

THOMAS AHART

DERRICK CHAU

ALVIN WILBANKS

ALSO PRESENT:

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

and

JUDY BECKER, Technical Assistant

Office of the General Counsel
MS. PODZIBA: Welcome back. I'm glad to see you're all returning for day two of the
great slog.

I have one announcement. Kenneth Bowen, from Office Depot, who is Kerri's alternate, had to resign from the Committee, and he did so in writing in accordance with the protocols.

So, we'll just strike him from the protocols and I'll send an updated version.

Nothing else changes except to remove him from the membership. Ok, I just wanted everyone to know about that.

That said, Patrick, I think we're ready to pick up where we left off yesterday.

MR. ROONEY: Morning, everyone.

Welcome back. I know Thomas is in a cab I've been told trying to get here through traffic. So hopefully he will be here in a few minutes.

Do you know if Aqueelha is coming today?
MS. PODZIBA: I sent her an e-mail last night but didn't hear back from her, and Audrey and Mary Cathryn were in a cab... oh, and they have arrived.

MR. ROONEY: So before we start I think Aaron wanted to say a few words before we begin.

So I'll turn it over to Aaron.

(Aaron Payment says blessing in Ojibwemowin language.)

MR. ROONEY: Thank you, Aaron.

So I have been asked to try to speak more slowly today. I have a habit of speaking fast, and when I'm nervous, I speak even faster.

Hopefully I will try to keep that in mind to help our person taking the transcript.

MS. PODZIBA: And we'll try to keep you from being nervous.

MR. ROONEY: Thank you. I appreciate that. Everyone has been actually doing a good job of that.

So, in front of your spots this
morning, everyone had two pieces of paper that we provided. The first was a request from Thomas for the language of the Rehabilitation Act, which was something we ended with yesterday. We talked about a piece that relates to Issue Paper 4A, but actually it's covered in 200.2 of the regulations where we talked about the requirements for alignment of alternate assessments based on alternate achievement standards. So we wanted to provide that in your binder. The top part of that provides a citation for where in the ESSA statute they talk about the Rehabilitation Act, and you'll see that on romanette I, Roman numeral V, where they reference Public Law 93112. That's the Rehabilitation Act, and then the text below it and on to the second page is the actual purposes of the Rehabilitation Act, which is what is being referenced. So we wanted to derive that citation so you could see the language there. The second document that you had is
something that we wanted to start the day today discussing, and this was back from right into the Issue Paper 4A. We left off, if you can remember, with the very end of Issue Paper 4A, which was E, Definitions Related to Students With Disabilities, and --

Morning, Thomas. Sorry you got stuck in traffic. Glad you made it through.

Number one is the definition of the term students with the most significant cognitive disabilities, and in the proposed text that we gave you in advance of today, we had just put a placeholder here for the subcommittee, and Ron was helpful to provide the readout from the subcommittee the other day. All of you are part of that, and really that discussion, you were part of that discussion. I think those principals you came up with make a lot of sense to us, and we certainly agree with those ideas with making sure the right kids are included, a lot of states are doing this well, and some states need assistance.
and we're talking about the needs of the child. I think that the ideas and those principals very much resonate with us as we're trying to think about this definition and this term and what it means and how we can help.

We did want to propose for the group's consideration creating an actual definition for this term. I know we talked about this a little bit in session one, and we didn't have a definition then, and the subcommittee didn't come up with a specific definition, but we wanted to propose this definition which we think is helpful, particularly in light of the new requirement in the ESSA that not more than one percent of kids at the state level can be assessed on an alternate assessment for students with the most significant cognitive disabilities. And that new very real limitation at the state level makes it more necessary I think to provide some guidance to states to make sure that they're providing good support for their districts and schools and IEPs.
teams to identify the right kids who need to take
the alternate assessment.

So we do have this definition coming up
a lot today and then I want to go further and have
discussion on this language.

This definition very much largely comes
from the work that the states have been doing
where they have designed new alternate assessments
that are in place right now. So we talked about
this in the last session, but there are two
consortiums for states: The National Center State
Collaborative, which is the NCST, or "nixit"
consortium and the Dynamic Learning Maps
consortium, groups of states that have been
designing.

New alternate assessments, and last
time we provided the specification guidelines that
each of those two groups defined. They got
togetehr and defined that criteria. It's in your
packet, again, which is Issue Paper 4A, so it's
there for you to look at if you want to see what
they're definition was.

We have largely tried to take their
definition, and that is what you see in number one
on this draft page where we defined it as, "if
their disability significantly impacts their
intellectual functioning and adaptive behavior and
requires extensive direct individual instruction
and substantial supports". That language we
largely took from NCST and Dynamic Learning Maps.

The two bolds underneath that are also
taken from the two groups of states and their
definition for this, and that is really, not
trying to be prescriptive -- actually I think this
definition is trying not to be overly prescriptive
but provide more of a guide to states as to how
they would then operationalize this. Because I
think states would have some discretion within
that of how this would look within their states
and districts and schools and with IEP teams. But
being clear that in this definition in number one
and the two romanettes underneath it are referring
to that, that it not be based on a student's particular disability category in IDEA, and not be based solely on a student not doing well on the state assessments. So it would be related to the student's disability and the impact that's impairing the intellectual functioning and adaptive behavior.

The term "adaptive behavior" in number one, we felt like if we were going to use that definition from NCST in our printouts from the state, that it would be helpful to then clarify what we mean by adaptive behavior.

So that is what number two had to do, to define adaptive behavior. I won't read it just purposes of time, but you can see it and it's all in front of you.

That language actually comes from the American Association on Intellectual and Developmental Disabilities. We took their definition for what an adaptive behavior means,

and you have that in your packets, in your
binders. And it shows up in the supplemental materials.

After the issue paper, you've got Participation Guidelines for Alternate Assessments, which shows the Dynamic Learning Maps and the NCST participation guidelines, and then the page behind the NCST participation guidelines is the language we took from the American Association on Intellectual and Developmental Disabilities where they defined adaptive behavior.

So you can see how we tried to identify what that would be, so we tried to provide a little more clarity on the field.

So with that I'll stop and see if anyone wants to provide discussion on that.

MS. PODZIBA: Ron?

MR. HAGER: I actually had a question from yesterday afternoon. I don't know if you want to do that now or just work on this and just hold the other question I had. I wanted to make a point.
MS. PODZIBA: I'm going to go back, because there was also a question about training that we didn't finish yesterday.

MR. HAGER: You want to wait on this and --

MS. PODZIBA: Let's start with this definition, since Patrick has introduced it, and before we leave 4A, we will get to whatever items there are.

Liz?

MS. KING: Just as a general comment, I'm more comfortable with the word "criteria" than "definition," and I'm not sure of the right way -- and maybe this is a distinction without a different for the purposes of the regulatory text, but just wanted to make that general comment.

And then I had a specific edit within the language of the criteria that you've offered here. I wanted to add, in one it says "Section 602(3) of the IDEA that significantly impacts intellectual functioning and is pervasive in
nature and adaptive behavior and to require extensive individualized instruction".

I'm just making sure that we're talking about a disability which is pervasive in nature.

MS. PODZIBA: Day, do you want to respond to the question of "definition" or "criteria"? Does that matter? I don't know where -- where would you put the term "criteria"?

MS. RIGLING: Yeah, if we're going to put "criteria" then it seems like we have to somehow link it more to a specific provision that would then provide a criteria for.

I think a definition is more a standalone part of a reg that then applies every time that word is used.

I don't know that you can't have -- I think you can't have a definition that is more open-ended and that ends up being "criteria". I mean, I guess I don't have a problem with the word "definition".

MS. PODZIBA: Right, but it allows you
to use that term throughout the regulation if it's a definition?

MS. KING: Yeah, and it's not -- I mean, I'm find either way. Yeah, I hear what you're saying.

MS. RIGLING: Because I think "definition" is a word that we have used throughout these regs. There is a number of places where at the end of the sections we have "definition" that is related to those sections.

So I guess I would prefer to use definition as long as we don't think that we're creating sort of a substantive difference.

MS. PODZIBA: And is pervasive in nature? Any response to that proposal?

Aaron, on that proposal.

MR. PAYMENT: So I'm wondering, as we go about doing this, so I'm thinking, you know, we're changing terms. I think there's probably going to be support to match whatever language we use to previous laws and provisions. So then when
1 we come up with new terms, we have to think about
2 the pros and cons to the effect of it on the
3 ground, and what will the effect will the effect
4 be to the practitioners' in the room.
5 
6 So I'm wondering, because my concern
7 is, by defining it, what I'd like to do is we're
8 trying to -- in my mind we're trying to eliminate
9 a little bit of wiggle room that some legal
10 districts will use not to provide the service.
11 On the other hand, I think states might
12 appreciate clarifying what it means, because then
13 it's just completely opposite that some are not
14 going to be able to advocate beyond what the law
15 actually said.
16 
17 So I'm worried about using a term that,
18 if it's not consistent with previous provisions,
19 that might further limit it. And I think that the
20 jargon or the language of the profession might be
21 used regularly that says "is pervasive in nature,"
22 but I'm worried that that then could be used as a
23 way to say, Well, prove that it's pervasive.
You know, if they have a significant cognitive disability and it's been diagnosed, it affects their intellectual functioning, why do we need a modifier on that that may further limit by having somebody have to demonstrate that? So I think it might add more confusion by saying pervasive in nature because now we got to decide what that means on the ground, where someone may say, Well, geeze, Johnny doesn't exhibit that all the time. That's not pervasive in nature.

So, if I could be convinced that that's steeped in the literature and it's solid, it's got peer review behind it, and we don't have to then debate that on the ground, that's what I'm concerned about.

And I think this is a good intro to any time that we change language, because we have to think about how it's going to be implemented when it's on the ground..

MS. PODZIBA: So, Liz, I'm seeing a lot
of nods in support of Aaron's concern about your proposal.

MS. KING: I mean, it's part of the learner characteristics used NCST. I think this is a pretty consistently used word in the context of talking about children with the most significant cognitive responsibilities. From a practitioner's perspective I think it is a meaningful word, but I'm getting some greater clarity about that.

MS. PODZIBA: So we'll move on to another issue.

Rita?

MS. AHRENS: Sure. I'd like to propose a safeguard to be put into romanette ii for the identification of students with disabilities who are English language learners.

We've seen overidentification of students in some cases where parents have had to actually go and hire private assessors to prove that their children were of average intelligence.
so that they didn't have to take the alternate assessments.

So I don't know what the language should be, but I think it needs to be modified.  "Determinations of English learners with the most significant cognitive disabilities must be made in a way that are linguistically valid and reliable".

MS. PODZIBA: Is there a response to that proposal? Where does it go?

MS AHRENS: In romanette ii, and at the end of romanette ii.

MS. PODZIBA: Could you read it out again.

MS AHRENS: "Determinations of English learners with the most significant cognitive disabilities must be made in a way that is linguistically valid and reliable".

MS. PODZIBA: Is there a response to that? Some people are shaking their heads yes.

Tony?
MR. EVERS: I have a procedural question.

MS. PODZIBA: Ok, why don't you raise that now.

MR. EVERS: Now I may have been asleep at the switch, which occasionally happens, but I don't remember the subcommittee's report suggesting that we should have regulations around this issue. So that's a concern of mine, how procedurally the subcommittee doesn't make that recommendation.

That aside, I mean, this is not my -- I probably talked more about this operationalizing how it's going to work, but I'm going to need time to digest this and. If indeed we're going to regulate this, which the subcommittee said something about, I need some time on this.

MS. PODZIBA: Ok, so the subcommittee, because time is no short, did what it was able to do in the time that it had, so I think it's fair to say this is a Department proposal, but I think
it's fair to table it for now given that you've just seen it.

So it sounds like --

Ron, do you have something?

MR. HAGER: I just wanted to say that, the charge to the committee, was not to make a decision one way or the other. It was to discuss. And we discussed for, you know, two and a half hours. But then we went beyond our charge by coming up with these guiding principals. So my reading of the charge was not that we would make a decision one way or the other.

So in my view, in terms of the procedural process, by our analysis and discussion, setting up principals, we kind of freed it to be of, you know -- freed the charge to the subcommittee to then elevate it to like every other provision we're discussing, you know, let's look at the language and try and agree or disagree, or modify it to reach consensus.

MS. PODZIBA: So procedurally often
subcommittees are created to develop proposals for the committee, and what happened was more a summary of what happened. The subcommittee didn't decide or come up with a recommendation to define it or not, in all fairness. So I think, because time was short, it comes back to the table with no formal proposal about a definition, but rather with the principals that emerged from the discussion.

But I think it's fair to give everyone a chance to be able to consider this definition with their advisors.

So, Patrick, perhaps we set this aside maybe 'till after lunch, and move on with the other issues.

Does that --

MS. KING: I had a question. I'm not sure why "is pervasive in nature" was taken out.

MS. PODZIBA: It's just. So I asked that it just be stricken through so that it's still there.
Yeah, it's to be discussed. If it wasn't stricken, it would look like it was there.

It's open. It's still an open discussion. It's not done. If it was done, it would either be there or not there.

So that's just to flag it as continuing discussion.

We're off to a good start.

MR. ROONEY: Susan, so I agree with that suggestion. I think it makes sense that the people who have to think about this have a chance to talk to their colleagues to consider what this language might be and what their thoughts and reactions might be.

I think one amendment to the suggestion that Rita made that I'd like to put on the table for all future and then going back and talking with -- instead of adding that sentence, I appreciate the point you're making, Rita. What if we were to try to incorporate that in the sentence before it where we say, "students with the most
significant cognitive disabilities must not be identified based solely on a student's previous lack of achievement or status as an English language learner or the student's previous need for accommodation".

So you get that point? I think my concern with the sentence you added is how a state would operationalize determining the linguistic and cultural validity and reliability. I think that would be a challenge for them to think about how to do that, so I'm trying to think about other ways to try to put that safeguard in that you're looking for without quite using those exact words. So that would be my quick suggestion on that for your considerations.

And I'm happy to -- we can table that.

MS. PODZIBA: Yeah, let's -- maybe, Rita, you can think about that off line, and we're going to table this for now.

So were cards up for this issue or for something else?
Lynn?

MS. GOSS: Something else.

MS. PODZIBA: Do you want to hold off?

MS. GOSS: Can I just put it out in the room?

MS. PODZIBA: Sure, let's do that.

MS. GOSS: When looking at the definition here, just keep in mind that it is the IEP team that determines their eligibility, so maybe there is a place that the IEP team should be listed in this definition.

MS. PODZIBA: Kerri, did you have another comment, just to put on the table for now?

MS. BRIGGS: I think Patrick actually came up with a better solution. I was going to suggest that we put Rita's sentence as a separate -- like number romanette iii. But I like Patrick's suggestion better.

MS. PODZIBA: Patrick?

MR. ROONEY: Just a comment on Lynn's suggestion...
Keep in mind that you have to look at this definition, if we were to agree to it and accept it or change it, however, if a definition ends up being in there, that this then fits in with 200.6. And earlier there is a reference to the IEP team as the one that makes the decisions about the student's placement, for these students. So this fits under wherever we talked about students with the most significant cognitive disabilities and where IEP teams make decisions about how to assess them and how to provide accommodations for them, it would then be referring to this definition.

So I don't know that you need the reference IEP team in that definition, because it's in the reg where they identified how to identify the needs of those kids on alternate assessments.

MS. GOSS: Thanks. It's just it's out of context.

MR. ROONEY: I agree. It's hard to
look at these pieces in isolation, then you miss
the function.

MS. PODZIBA: So I want to go back to
any other items on 4A, and when we broke, Mary
Cathryn, you were looking for a place for a
training.

So did you have some time to come up
with something?

MS. RICKER: I did, yes. Thank you.

Our suggestion is on Page 3 of Issue
Paper 4A, what I believe is romanette ii, and then
the language is nine, where it says "ensure that
general and special education teachers" insert
there "also including paraprofessionals, and other
support staff," and then insert "received training
on administering the alternative assessments,
and -- and then continue the rest... "know how to
continue assessments including alternate
assessments".

Because it didn't look like the other
language and intent that was struck out on Page 6,
the gist of that did get included on Page 3, except for the training portion. So that's the only thing we inserted under Page 3, and then we inserted "paraprofessionals" as well, given the role they played in assisting general and special education students delivering adaptation systems.

    MS. PODZIBA: Regina?
    MS. GOINGS: Thank you.

    Mary Cathryn, I appreciate that. I just wanted to do a little bit of tweaking of the terminology that you used with the paraprofessionals, as we give specialized instructional support personnel and other services, instead of what you were referring to, "other related services personnel".

    MS. PODZIBA: So it would read "including paraprofessionals and..." and can you repeat that?
    MS. GOINGS: It would read "specialized instructional support personnel and paraprofessionals," which would include

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psychologists, speech pathologists, OTTs, et cetera.

MS. PODZIBA: Day, do you have a comment?

MS. RIGLING: I just was wondering if we could edit the piece so it would say take training to know how to administer. It seems like there's too many "administers" in there, just shortening it a little bit.

I don't actually care for the phrase "know how," but I know that's statutory, so it probably would be nice to keep it.

MS. PODZIBA: Is that it?

MR. HAGER: No.

MS. PODZIBA: "Received training to know how".

Richard?

MR. POHLMAN: I have a question about whether the intent here is to ensure that all general education teachers, because we're talking about the assessment for students assessed under...
the alternate assessment.

Is it possible to make it clear that it's only necessary general and special education teachers? Because not everyone in a building, for instance, interacts with students on all levels.

So I'm wondering if there is a way to narrow this and get clear that the expectation may not be that every general educator a going to understand and know how to administer the alternate assessment.

Just as we're looking at precious personal development time, I'm wondering if there is away we can narrow this expectation, and it will likely happen on the ground. So maybe this is something a we will narrow as we get closer to the limitation, but I think this is something we could also address here.

MS. PODZIBA: Mary Cathryn?

MS. RICKER: Thank you.

I would say, because the language had already listed "administering assessments" without
the qualifier "alternate" and list them as two
distinct things, because it says "administer
assessments, including alternate assessments".
I do believe that you are absolutely
correct that practically it will be the people
most involved and most responsible for
administering any assessments, including alternate
assessments.
I would prefer to keep it as this,
though, because there are those two distinct
listings of assessments and alternate assessments.

MR. POHLMAN: Sorry I'm struggling again
back with the whole idea of trying to put all of
this together here.

MS. PODZIBA: Patrick?

MR. ROONEY: We have a proposal that
may address Rich's point and also satisfy Mary
Cathryn, which would be to say, "receive necessary
training." So that provides a qualifier that when
it gets operationalized, then the school would
have the discretion to determine who needs the
training and what training they need to know how
to administer the assessments, that it provides a
little more wiggle room.

MS. RIGLING: And maybe move that to
after ensure. "Ensure," comma, "provide necessary
training" --

MS. JAMES: No.

MS. RIGLING: -- "general education
that teachers know how"?

MS. PODZIBA: They're not liking that.

MS. RICKER: Too many clauses.

MS. PODZIBA: "Necessary," is that
alright with you?

MS. RICKER: I actually don't like
"necessary". The word "necessary" is a powerful
tool for educators.

MS. PODZIBA: Ron, on this issue.

MR. HAGER: Yes. On the two at the
end, I think it's two separate issues and the
statute does include "know".

So I don't say "training to know".
It's "training and know". I think it's inelegant.

I think you have to keep it consistent with the statute.

So it's "training and know". That's how I would propose it because of the statutory language. You don't want to take out the "and" when you are editing the training.

MR. ROONEY: Isn't it "training to know how to administer"? It's not other training, right?

MS. RICKER: I would say that, I mean, in both for our English language teachers and our general education and our special education teachers, when there is an assessment for an accomodation for students, that it is both training on the assessment itself; what is the assessment, what are we measuring, you know, all the things you need to know the assessment will do for you or won't do for you.

And then there is training on administering the actual assessment. Usually it
should be, in best practice, it should happen in impact order. First you learn about the assessment, and then you learn how to use the assessment -- and you learn how to administer the assessment and then how to use the assessment.

So those are the two distinct training opportunities.

MR. HAGER: Can you see it?

MS. PODZIBA: What Judy just put up is "training to administer assessments" and "know how to administer assessments".

MS. RICKER: Which is what we have.

MS. PODZIBA: Leslie, is your comment on this item?

MS. HARPER: Yes. I was going to state, coming from a small rural school district, everybody in the school needs to know how to administer all of the assessments.

Coming from experience in both the IEP title schools, which I have years of experience in, and in our Tribal Ed Department working with
the eight public schools that are in border towns
of our reservation, in administering the
assessment, we're short-staffed. Any given
testing day anybody is called out to test any
student.

We know it's best practice to have the
kids familiar with who is testing them. We know
all this, but ten years, small rural school
districts, everybody is pulled out to administer
the test, whether you're you a specialized
professional or not. It happens.

So I mean, we've had to institute all
staff training on all aspects of the training
assessments, you know. So I mean, it's important.

MR. POHLMAN: I think we're talking
about -- for my school it's four hundred kids. My
point is when we're talking about alternate
assessment trainings to have a requirement that
every generalized training on that is perhaps a
bit excessive. Again I believe it will be handled
in the field. But I think that having an
overactive state office that may come in and demand and see training materials for all general educators to create a program for monitoring.

MS. PODZIBA: I think the fix was "necessary".

Leslie, does that work for you, "the necessary training"?

MS. HARPER: Sure.

MS. PODZIBA: Derrick.

MR. CHAU: I was just wondering if the necessary clause might not be attached to the clause under alternate assessments, under paragraph C and par C3(b), because that might directly address Richard's concern about the alternate assessments in the necessary training rather than all necessary training.

But I don't know, it was just an idea, and I think I'm looking at it now and maybe the "necessary training" as proposed might be better.

MR. ROONEY: Sorry, Derrick. You mean that after "including as necessary alternate
assessments". I think -- yeah. We're getting to
the "necessary" spot so people can see what you're
saying.

MR. CHAU: I don't know. I mean, I'm
open to either. I don't know if there is an
implication of putting it in one place or the
other, but it seems like Richard's point was more
focused on the alternate assessments rather than
the other assessments. The rest of the sentence
is "applicable for all" --

MS. PODZIBA: Ok. Perhaps we can let
the Department, when they scrub the language,
figure out the better place. I think conceptually
we all agree that the "necessary training" needs
to be defined.

MR. HAGER: I had a reaction. Actually
this is partly because we're kind of jumping in
the middle. This is part of B, not C. So this is
for all assessments, not just the alternate.
So the goal here is to have the
training and know how to minimize a need for the

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1 alternate assessment. So we don't want to have
2 the training qualifier up. Just the alternate.
3 It's on all of them.
4 So I think that, just in terms of the
5 Department cleaning up the language, just keep in
6 mind this is B, not C. So it's really all the
7 assessments, not just the alternate assessment.
8 MR. ROONEY: I think the word
9 "necessary" here could be in both places and it
10 would not be duplicative.
11 To Mary Cathryn's point, the necessary
12 training, whoever is giving the testees, and then
13 as necessary alternate assessment, to Richard's
14 point, is probably not going to be all of the
15 staff in the school, maybe a subset of the staff.
16 I mean, I think we're Agnostic and
17 people have suggestions, keeping in both places
18 may not necessarily be duplicative.
19 MS. PODZIBA: Aaron?
20 MR. PAYMENT: So, I think that the
21 term, "and other appropriate staff," covers who
would be needed to be trained in order to administer, because it says "other appropriate staff". And I don't argue with concluding about the professional specialized support personnel, because I think the reason why we're advocating to include that is because the "alternate staff" is unclear. But this does allow for small schools and whoever needs to be trained, and the school does have to decide that.

MS. PODZIBA: Alvin, do you have a comment?

MR. WILBANKS: I was just going to say what he said. I agree with that. That the staff includes whoever needs to train or whoever needs to be involved. It could be everybody. It could be five, ten people.

MS. PODZIBA: Thomas?

MR. AHART: I don't want to be coming across as a minimalist here, but I was curious, if we had "training," what does "ensure" mean?
I'm just wondering if you ensure that people know things, how do we do that absent the training?

MS. PODZIBA: Mary Cathryn, do you want to respond?

MS. RICKER: Sure.

There are a couple of different ways of ensuring that teachers and paraprofessionals get what they have a right to have. First is educating them that they have a right to this sort of training, and making sure that they work in their districts to get that.

Because the state, because it starts with "the state must ensure" this, the first place of responsibility is for the state to determine how they're going to share that information with school districts that paraprofessionals and other licensed educators get this training.

The second would be for the people who are the direct advocates of our students, and that is if a new test is brought to me to make sure...
that I know I have a right to expect some adequate training.

MS. PODZIBA: Tom, you look a little puzzled.

MR. AHART: Perhaps my question wasn't clear enough.

It seems self-evident that training needs to happen for the right people to know what it is they need to do.

I'm curious, if I go through the regs and every time the word "ensure" appears, that has to be clearly defined if we're going to make this an awful lot longer.

MS. PODZIBA: Ron, can you answer that?

MR. HAGER: Well, the context was there was language later on that was eliminated because it was duplicative, and Mary Cathryn's point was that the phrase "training" was eliminated in that phrase, so that phrase that they took out is duplicative. Technically it wasn't duplicative because it wasn't reflected in this.
So I think what Mary Cathryn's proposal is trying to do is take that phrase that was crossed out as duplicative and make it clear that, we mistakenly crossed it out and it's not duplicative.

I'm speaking for you, Mary Cathryn.

You may want to respond, too. I think that was your point.

MS. RICKER: Yes.

MS. PODZIBA: Lynn?

MS. GOSS: Just to listing who gets the training. Throughout ESSA it does list the teachers, the paraprofessionals, in that list, and that's been common throughout that it's listed in that manner.

So this is just putting it in line with what other sentences in the law say.

MS. PODZIBA: Thank you.

Ron, did you have another issue?

MR. HAGER: I did.

MS. PODZIBA: In 4A?
MR. HAGER: Thanks.

And actually this was Thomas' point yesterday at the end of the day. It's on Page 5D(1) in the middle of the page, where he had proposed adding in "as required under" -- listed a specific provision of IDEA, and he put it in kind of the middle of that paragraph.

So I think what he had said was, "established monitoring rules and clear appropriate guidelines as required by IDEA Section 612 A 16(c)". Did you find it there? Yeah.

So anyway, I did actually look at the statute last night, and it's good I think to have the coordination between ESSA and IDEA. The problem is that provision doesn't really -- that provision says nothing about monitoring. So I think instead of having it where you proposed to put it, so you have "established and monitored as required by IDEA," that probably would be better to just put it in the end, "in coordination with the requirements of," you know, the same statutory...
So just putting it in a different spot in that paragraph, and making sure it's coordinating with the requirements of IDEA...

Because they don't really fully align, so we want that kind of coordination, but just technically how it was phrased doesn't quite fit with what the provision is.

MS. PODZIBA: Tom, does that work for you?

MR. AHART: My suggestion was to modify the "guidelines" statement, "appropriate guidelines," so that it's tied on there instead of implying that there's two different sets that need to be addressed.

MS. PODZIBA: Ron?

MR. HAGER: The other point is that if we look at that provision of IDEA, it doesn't refer -- it's different guidelines all together.

There's no mention in that provision of IDEA of "most significant cognitive disability". There's
no mention of the one-percent cap.

So you've got guidelines under IDEA that cover just who makes the decision, and there's guidelines under IDEA, but the guidelines under IDEA don't jibe with the guidelines under ESSA. So you really have to read the two together.

And so, again, that's why I think it's better to put in not there, because even the guidelines are different, but just put in the coordination with it. I think that's the most important point.

MS. PODZIBA: Tom?

MR. AHART: So, what I'm trying to avoid is having two different sets of guidelines. So if there's ESSA requirements that go beyond the IDEA, perhaps those could be specified in addition to what's already in IDEA.

MR. HAGER: Yeah, I think that's what we're doing here. In other words, we're trying to flesh out in the ESSA regulations the provisions
that are not covered by IDEA.

So, but by having -- I can attribute
this to a more technical legal brain freeze thing
I'm having, but by saying "guidelines as required
by IDEA" it's also required by ESSA.

The mean, the goal would be -- so I
think my proposal would cover that, because we
want to have the two sets of guidelines aligned,
but they don't necessarily require the same thing.
So we want to align them.

So that's why I'm saying coordination
with the requirements of IDEA helps us to make
that alignment.

MS. PODZIBA: Aaron, is your point on
this item?

MR. PAYMENT: Yeah, I'm trying to think
of the right word. I was thinking "in
coordination with" or "consistent with".

Consistent with might not be -- there's
an issue, but it might actually be worse, because
it suggests they have to be lined up and then it's
the intersection that has to be looked at.

Maybe it will be notwithstanding the
requirements of IDEA, because it has to be done
here, and whatever requirements are under IDEA has
to be then too.

I'm not an attorney. This
"notwithstanding," that means that all those other
ones apply too.

MS. PODZIBA: Let's see. Kay, could
you help us out here? In order to get this
aligned, what would be the best way to frame it?

MS. RIGLING: I mean, are we trying to
say that they must include in here guidelines
under IDEA, these two points?

MR. PAYMENT: I think the crux is that,
because sometimes when people are looking at
compliance, they read things in absentia.

So I think what we're trying to say is
that we want all the provisions in this law and
other applicable laws to apply. And so I think
where we got this point was we wanted to reference
the other applicable laws.

So I, as an advocate, I want every law
to apply, and to be clear, the states that can't
read one law and not consider all the other
related laws.

MS. RIGLING: I mean, isn't the point
that we want one set of guidelines to govern IEP
teams, whether we're talking about students with
disabilities or students with the most significant
cognitive disabilities, and that these are
additional requirements to these guidelines?

They're not new guidelines, or they're
not a separate set of guidelines. They're part of
the IDEA guidelines.

Isn't that really what we're trying to
do here is just make sure that it's one set of
guidelines that has these additional components?

MS. PODZIBA: Yes, so how do we do
that?

MR. ROONEY: I think the way this is
written now to say, number one, that the
established guidelines for IEP teams, and the
monitoring and modification of those guidelines,
and those guidelines for identifying who has the
most significant cognitive disabilities that are
taking alternate assessments, should be then in
coordination with the requirements of IDEA.

So It's saying, You've got the
guideline letter IDEA. You should make sure when
you establish these guidelines, which are now in
the statute in the text, that it's now consistent
or coordinated with those other guidelines, so it
becomes one set.

Does that satisfy your concern, Thomas,
or are you still worried about the language?

MS. PODZIBA: Thomas?

MR. AHART: I guess I'm unclear as to
whether there are going to be two sets -- whether
the intent is for there to be two sets of
guidelines or one.

And I also felt compelled to mention,
since many others are, I also consider myself an
advocate.

   MS. PODZIBA: Patrick?

   MR. ROONEY: I mean, I think the first word in number one is "establish". So this section is you have to establish guidelines for who should take the alternate assessment, right?

   That is not in the IDEA regs. That is being made right here.

   And then I think Ron's suggestion is trying to then marry your point, which is they should not be this connected thing to what is happening with the guidelines in the IDEA, or states should be coordinating those things, so it ends up becoming one set of guidelines, but part of it is in the IDEA and part of it is here.

   I guess the question is whether you think this does that or not. But I do think that this number has the word "establish" in it, which makes it clear that they're saying there is something else states now need to do.

   It's actually something they're already
doing because they already have alternate assessments, so they're putting in this fact. They're putting it in this regulation.

MS. PODZIBA: Thomas.

MR. AHART: I guess it would be that our states are in a position to actually provide guidance can be clear. So on the ground we actually can do the right thing by the kids and actually follow the regs.

And if it sounds like two different sets, then probably at the same level we're going to feel like we have two parallel sets of regs that we're trying to follow when we're implementing these regs.

So that's a recipe for inadvertent noncompliance.

MS. PODZIBA: Ron?

MR. HAGER: Yeah, that's why I chose "coordinate with" instead of "notwithstanding". Because if you use the phrase "notwithstanding," that implies you have two different sets of

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What I'm suggesting is, by having the phrase "coordination with," that you're setting up guidelines, and as you're setting those guidelines up, you're considering both requirements and not have to duplicate.

So I think Thomas' point was that. So I'm trying to phrase it in a way that reaches Thomas' point in not having two sets of guidelines, and I think that's the best way to do it.

MS. RIGLING: What if we put after "one," "establish, consistent with the requirements of IDEA Section 612A 16C, and monitoring limitation of clear," maybe comma after "of, clear and appropriate guidelines"?

MS. PODZIBA: I think that gets to your point earlier, Ron, that it wasn't on the "monitor," it was on the "guidelines".

MR. HAGER: And also "as required by IDEA and consistent with IDEA". And maybe we can
think about it and that might work.

MS. PODZIBA: Aaron?

MR. PAYMENT: I think that does it.

Yeah, I think that "consistent with" does it.

You don't have to say "coordinate".

That's kind of an ambiguous term for states.

"Consistent with" means it has to line up with the IDEA.

MS. PODZIBA: Ok. I think we're good on this one.

Other items on 4A?

Aaron?

Alright.

MR. RUELAS: Before you leave it.

MS. PODZIBA: We were just about to leave it, so, yeah, Ryan.

MR. RUELAS: So I had a clarifying question from yesterday in regards to Page 2 at the very beginning, and area three, where we changed a word to "entitled" versus "eligible,"

and I still am curious about why we did that.
MS. PODZIBA: Ok, that was something that Kay was going to look into.

Kay, have you had a chance to do that?

MS. RIGLING: We have not.

MS. PODZIBA: So that's still in play.

MR. RUELAS: Ok.

MS. PODZIBA: Alright. We'll wait until we get a legal interpretation on that.

Liz, did you want to make a comment on that?

MS. KING: Yeah, I wanted to offer the rationale.

So there are two pieces. One, I like the one Audrey added yesterday which is there are children who are eligible for things that they are not entitled to. In order to get IDEA accommodations, right, you have to go through the legal process of, then at the end of that you are entitled to those accommodations in a way that a child who, if they went through the process would be entitled, is not entitled until they go through
the process. They're just eligible.

So that was Audrey's point.

The point I was making on this one yesterday is just the distinction between like an accommodation which would be convenient and would be helpful, versus that which is legally required, because making clear that this is only covering those accommodations which are legally required under, whether it's IDEA or 504, or Title VI, or some other existing civil rights law that requires that it be provided, is different than just eligible for like a child who would better be able to demonstrate if they had more time. Maybe they're eligible but they're not entitled. They don't have that legal requirement attached to them.

MS. PODZIBA: What I'd like to do is hold off the discussion on this until we have a legal opinion about it, because we may be -- I think that just frames the discussion that we're going to have.
So all of that paragraph three will come to us for further discussion.

So, on 4A we're going to hold off on paragraph E at the bottom of Page 6. So we'll come back to that some time after lunch, after everyone's had a chance to really review the proposed definition.

So, Patrick, I think that makes us ready to go to 4B.

MR. ROONEY: Ok. 4B. I imagine we'll have a good discussion on 4B.

So, before I begin, I'll do a little bit of an overview. I will point out that some of the language in Issue Paper 4B has been covered previously, so, we won't actually have to talk about all those languages that are in here. We can just take the first page and a half or so.

But 4B, and I just want to step back a little bit and remind us of the discussion we had two weeks ago when we started this, this is about the requirement that's in the ESSA that states may
not assess more than one percent of kids on the alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities. And that's the last time I'm going to say that big long term, alternate assessments, for the purpose of clarity, but that's what I mean when I say that.

This is a pretty significant change from No Child Left Behind to the Every Student Succeeds Act. Under No Child Left Behind, the cap was states could assess as many students as they determined necessary to take an alternate assessment, but there was a cap on the accountability side on the percentage of kids who could be counted as proficient in the state's accountability system.

Under ESSA, the language has now made a significant change on that. So it's no longer on the accountability side. It's on the actual percentage of kids who may be assessed by an alternate assessment. And there's now a
requirement that states may not assess more than
one percent of students on the alternate
assessment.

Districts do not have that. We'll talk
about that in a bit, but this is done at the state
level.

And I think what makes this
particularly important for us to discuss is that
we talked about this last time, and I think you
have the data that we gave you data the last time
on the range of states and where they fall and how
many are testing more than one percent currently,
which obviously they can do and they've been doing
because there wasn't a cap on how many districts
were tested.

But currently a lot of states are over
one percent, and this will have to be a change in
their processes or a repeater -- something will
have to change in order for them to get under one
percent of children being assessed.

We spent a fair bit of time in the last
discussion talking about one percent and whether that was the right number and where that came from. I'd like the committee to not spend a lot of time on that. I think Congress was very clear that one percent is the cap now. That's written into the statute. I think there was research behind that when we came up with the regulations back in 2002, and I think there's competing research about what the right percentage was. It was one percent in the regulations. Now it's in the statute. So now it is a cap that is in the law for us.

I think why it's important to have this conversation is, you know, the Secretary -- it clearly has been found the Secretary has the authority to waive this aspect of the statute if he or she deems that necessary. But we take that cap very seriously in that that waivers should be provided to states when there's a rare circumstance or where there's a clear justification for that, and we want to make sure
that all students are being appropriately assessed
and that people are making the best assessment for
individual students on the assessment that makes
sense for them. And then we think that Congress
thinks the statute should be less than one percent
for students on the alternate assessment.

We talked a little bit yesterday about
in general how the field has made significant
changes in the assessments in order to follow the
principals of Universal Design for Learning and
use computer-based testing and providing
accessibility features that can provide more
accessible tests and more accommodated tests that
more students should be able to take the assessed,
the general assessment and with accommodations, if
necessary.

So, because of that, you know, we're
trying to figure out the best way to focus on this
requirement in the statute that states not exceed
one percent of students taking the alternate
assessment, and taking into account this idea that
the Secretary, you know, is supposed to be a reference that has the authority to waive that cap.

We think it's helpful to states and to the field and to the public to be clear about what those requirements are what those circumstances are that the Department should take into account when considering whether a state can exceed that one-percent cap.

So we can talk through the language. I just wanted to set that context up that, because of the unique nature of this aspect of the law, we do think it's helpful for us to clarify what the expectations are for a state to therefore be excluded where they think they need to exceed the one-percent cap and they weren't going to ask for that.

So, there are a lot of great things on this issue paper in particular, and I wanted help try to provide some of the frame and the context for why they think that is necessary and
appropriate in this case so there is clarity in
the field on what are the expectations the state
is going to come in and ask for a waiver and that
an elected department is going to consider, so
it's clear to each individual state, it's clear in
the systems across states, and it's clear to the
field in what the expectations are that, if the
situation were to come to pass, that state would
need to meet if it exceeds one percent.
So, based on that, I want to walk
through all the text and then maybe during the
discussion we can break it into pieces in order
for us to try to dig into this. But I do want to
walk through all of it together.
So, I think for our purposes in the
discussion here, starting on Page 3 of the issue
paper, about halfway down with Number 2 is the
first piece you have not seen before. The pieces
above it we talked about under the previous issue
paper. So this is the first part that talks about
the requirements for the alternate assessment.
MS. PODZIBA: On Page 2 or 3?

MR. ROONEY: Sorry, on Page 3. Thank you for that clarification.

First, you can see that the language tries to be consistent with what we showed you last time in Issue Paper Six about the full package of the regulation that the cap is not at the interval that districts may exceed one percent. But if they are to exceed one percent, then they have to provide justification to the state.

We added at the bottom of Page 3, romanette ii, language in red that describes some examples of reasons that a district may need to exceed one percent. These are not designed to be prescriptive. They're not designed to be exhaustive. We talked a little about these examples in the last session as things that may cause a district to exceed one percent. But, you know, I'm sure we can come up with better ideas if possible. I don't think it's helpful in the...
regulation to try to be exhaustive. I don't think you could do that. I don't think it's necessary, but I do think it's necessary to clarify some possible scenarios in which a district may exceed one percent.

Now, I'll point out that this language here we actually copied from a different part of the regulation. So in the regulations where we defined "after yearly progress" for the accountability systems in our current regs are now no longer necessary because that accountability first changed when we had the cap of one percent in the current regulations, and states felt it would be sufficient if we included this language if districts were going to be asked to exceed one percent of kids to be proficient in English language assessments that would be given by the state. We copied that reg from 200.16 and moved it to 200.6, so these examples now apply in this scenario. So that's where those came from. I just wanted to put that content out there for you.
Second, if you look there on Page 4 and actually, sorry, romanette iii on the top of Page 4, I think Thomas had the suggestion the last time to clarify the language and the statute. The bold blue you can see there -- oh, no.

Yes, sorry, in romanette iii, the statute talked about all LEAs that submitted -- all LEAs that exceed one percent, then the state has to provide oversight of those LEAs. The previous language wasn't exactly what the statute had, and so Thomas suggested that we go back and clarify this, that it's all districts that exceed one percent that the state should be providing oversight. So we clarified that in romanette iii.

And then Number 4 is where we get into the requirements for the state cap. I'm going to walk through it as a piece, and then we can pull it apart and people can ask questions, or people can discuss the different sections of it.

First, because this is a waiver, and typically the way a waiver should work is that it...
be prospective that if a state identified its need
to waive something in the law and then come in and
ask for something to be waived and the Department
approve that waiver before it makes that change in
the system, we ask that -- we think this needs to
be prospective.

We think states need to identify that
they will be exceeding the one percent and then
come in with the request before they give them the
test and determine whether to grant the waiver.

So you can see romanette i that we
require that the state submit the waiver request
at least ninety days prior to the start of the
state's testing window.

I will say there is a slight disconnect
here with the waiver provisions in general in the
statute in the ESSA that says the Department has
one hundred and twenty days to act on a waiver
request.

I think the reason we use ninety days
here, and we are open to discussion on this, is
just kind of thinking about the timing of when the state may have the data to know it needs to exceed one percent, and submitting that to us, that tries to give some flexibility for states to get that data in time to submit it, but then also giving us enough time review that request and make a decision before the assessment can be developed. So that is what we're trying to balance in romanette i.

And then there are three pieces behind that of what are included in the state's request, and I'm going to take each of them separately.

They're following in the paper, each of the romanettes is a different aspect of the application. So romanette ii is about including data. So the state should be able to provide data in the previous year, looking backwards, about the need to exceed one percent. So they should be looking to identify that there is not a disproportional number of kids taking the alternate assessment, and the language references
are in the ESSA, the statute. 1111C A, B and D reference the subgroups, major racial and ethnic groups in the state, English learning status and socioeconomic status. The only one that's missing is the C, which is actually children with disabilities. So it makes sense that the other subgroups are included and are captured here in this romanette.

Then the second piece under this romanette is that they ensure that they include all the students in the assessment system, both for the all-student group at the state level, and then also for children with disabilities, in particular. So this assessment is about children with disabilities.

The purpose here is that we want to make sure all kids are included in the assessments, which is obviously an important component of making sure you have valid information across all of the schools and across all of your districts, and we want to make sure
that kids are not being precluded from the system.

That would be a concern for us.

The second section, romanette iii, is a set of assurances where the state is looking at what is happening with the district level. And we focus this piece on two aspects of districts that the state should be considering. The first are districts that have exceeded one percent, which makes sense. A state exceeding one percent, most likely the districts that exceed one percent, our biggest portion of math learning, so that they're appropriately including all kids in the right assessment.

But as we just talked about, districts can exceed one percent, and there may be a really good reason for districts to want to exceed one percent. If you look just at the district that exceeds one percent, that may not be sufficient.

It may not really give you a sense of what's happening at the state level.

So the second set of districts that we
highlight in this romanette is districts that the
state -- I'm sorry. Right. At the end of
romanette iii, "and any other LEA that the state
determines... participates in exceeding the cap".
And we did not define this. We purposely did not
define this as we assumed this might change from
state to state, and we wanted to give the state
some discretion to figure out what this might mean
in their context.

But, you know, the states should be
working with their districts to figure out or make
sure they're providing the guidance for their
schools and to make sure that they are not being
inappropriately assessed.

So these assurances focus then on those
groups of districts, those two groups, that
they're making sure they meet the guidelines that
we discussed yesterday in Issue Paper 4A that they
didn't increase the students who are taking the
alternate assessment unless the state can document
that there is a higher prevalence of such students
who need alternate assessments and that the
districts are not disproportionately assessing any
students not on alternate assessments, and that's
from the previous romanette.

Then the third romanette, the romanette
iv, which appears on Page 5 of the issue paper, is
about the state's plan and timeline to improve
implementation of the state guidelines. The
assumption is that this waiver would be granted
for one year and that the state would be providing
information about how they are going to come into
compliance with what's in the ESSA to assess one
percent or fewer kids on an alternate assessment.

So these three bullets are focused on
improving implementation of the guidelines or
identifying who should be in an alternate
assessment, providing oversight for districts that
exceed one percent or that the state identifies as
significantly (unintelligible) one percent, and
also plans that address any disproportionality
that they identify as a problem within their
So I know we're going to have a lot of discussion on this, so I just wanted to give us a chance to walk through all the pieces together. I do want to make sure we're thinking about this as a package of what the state would have to submit in order to help identify that it really does need to exceed one percent.

We are trying to be clear that the statute says one percent, and we are trying to maintain that distinction for all states, to say we're not going to just waive this requirement, that we want to set expectations that it has to be rare and adequately justified to exceed one percent.

MS. PODZIBA: I think, just to help in our discussion, I'm going to suggest that we start with questions and comments and concerns on Paragraphs 2 and 3, and then probably take a break and start on the waiver section.

So, I see a lot of cards, but are there
particular comments or questions on Paragraphs 2 and 3?

There are cards up. I'm assuming --

MR. RUELAS: What page is that?

MS. PODZIBA: So Page 3. Paragraph Two is kind of in the middle. It's the beginning of the text that we haven't seen in 4A and then up to but not including Paragraph 4. So it ends at romanette iii on Page 4.

So questions and comments on that?

Janel?

MS. GEORGE: Just a clarifying question about what is meant by -- and I know this was based on previous discussion, but just clarification on "school, community, or home programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities".

Just and example or an explanation of what that could entail, what that means.

MR. HAGER: So I think part of what
we're thinking is there could be an area in the
state where there's a rehab hospital or something
else that, you know, families are likely to live
in that general area because of the program that's
being offered, and so as a result they have a
higher incidence of students who would meet the
definition of students with the most significant
cognitive disabilities.

MS. PODZIBA: Alvin?

MR. WILBANKS: On Page 4, 2A,
"disproportionality" concerns me in that that is
not in the statute, and it's my understanding that
that's being looked at and I would be implying
that I think this is a limited -- whether or not
you get --

MS. PODZIBA: Excuse me, Alvin, could
you hold off on that, because I'm going to get to
that section after the break.

So we're above that up to but not
including Paragraph 4, which that follows from.

So just the very top of Page 4, and
I'll get you first for the waiver, so that -- ok.

Lynn?

MS. GOSS: Mine's just kind of a technical question. I'm new to all this and I've learned a lot in this whole process, but can you explain to me exactly, if something is in regulatory text, and then if it's in a guideline, if the guideline can have a "must" in it, so just to kind of maybe clarify the differences in how it's weighted and what should be where?

I just am kind of curious as to how.

Is my question clear?

MS. RIGLING: Are you reacting to specific text here?

MS. GOSS: Well, just kind of in general. Like I'll hear things, Like, well, it should be in the guidelines.

MS. RIGLING: Ok.

MS. GOSS: So, if it's in the guidelines, can there be a "must do"? So if there are consequences -- if you have a guideline and
you don’t follow those guidelines, are there consequences depending on how it’s written into the regulatory text? I guess that’s my question.

MS. RIGLING: If it’s in the regulatory text and it’s a “must,” once the regs become final, then that would become a requirement in the respective regulatory entity, just as if it was in the statute. So it essentially has the force and effect of law.

Here in romanette ii, where we have a “such as,” that’s meant to be guidance within the regulation.

We also, and I think Richard has probably more than anyone suggested that there’s a number of topics that we’ve talked about that would be more appropriate being guidance. What he means by that is, the detail probably would not be included in the regulation, so it wouldn’t have the force and effect of law.

What the guidance does is it interprets the regs or the statute. It’s generally the
1 Department's best interpretation of what it means.
2 It is non-regulatory, meaning it does not have the
3 force and effect of law.
4 If it uses the word "must," then that
5 "must" should also reflect a statutory or
6 regulatory requirement. That's at least our
7 guiding principal.
8 Maybe sometimes we make a mistake. But
9 if we use the word "must" in Guidance, it should
10 have a basis in the statute or reg. Otherwise,
11 guidance should be helpful information for the
12 respective entity to use in order to implement the
13 program s.
14 It's not meant to add additional
15 requirements. It's meant to give examples,
16 hopeful clarification, but not something that
17 you're required to follow.
18 Unless it says "must," and then it
19 should relate to a statutory or a regulatory
20 require.
21 MS. PODZIBA: Ron?
MR. HAGER: And I have two on Page 3. The first one actually is above Number 2, so it's for one, but anyway I put it in issue paper yesterday. Anyway but you have one, then you have whatever the subletter i, ii and iii. Now it's my understanding that the statute also requires that the assessments include a UDL to the extent feasible. I'm assuming that that should go in here as well, or is there some other place? Because this is the criteria for the alternate assessments. Or do you have that somewhere else? But it seems it would fit here, so it's just a question of --

MR. ROONEY: I understand. In 200.2 are the requirements for all the assessments. It says they must be consistent with the principals of the Universal Design for Learning and all of the assessments in 200.6, the technical requirements are covered in 200.2.

And just to remind you, we talked about this language above Number 2 on Page 3, romanette
iii, there was a suggestion actually about
changing it. This doesn't encompass that
discussion that we had yesterday.

        MS. PODZIBA: Did you have another
question?

        MR. HAGER: I did. So I apologize for
not raising it yesterday.

        But anyway, the other one is, it's
three -- well, romanette two, New Information.
Now you used the phrase, when you introduced that
topic, that the districts will have to provide the
information to review, and then on the next page
over you talk about required information.

        So I don't know if you want to make it
clear that they require and review any
information, or that the state requires the school
district to provide the information and then the
state reviews the information.

        I'm just trying to, you know, kind of
add in some language that you put in, but it's not
in this proposal.
MR. ROONEY: I don't know that we're opposed to that language. I also point to Thomas' point earlier about unnecessary words.

Presumably if the state is going to review the information, that will have been submitted in some way in order for that to be reviewed.

Also, the ESSA, the statute does not require that the state approve the district to exceed one percent. There is no cap officially. They're just asking that, if it exceeds one percent, that information the state would then review to provide oversight.

MS. PODZIBA: Ok, Liz?

MS. KING: Yeah, I just wanted to add a romanette iv that is about just -- sorry, right here above -- right before the four, the regulatory --

MS. PODZIBA: After romanette iii.

MS. KING: Yeah, so after iii add romanette iv, that is make all of this information
1  publically available, just for the sake of
2  transparency. The expectation is that this
3  process is meant to be a transparent process?
4  MS. PODZIBA: Any response to that
5  proposal?
6  MR. AHART: It already is, isn't it?
7  MR. PAYMENT: So are you asking --
8  that's my understanding, too, it already is. But
9  are you asking for something affirmative to make
10  it available? If it's available some place and
11  subject to FOIA, you can probably request it, but
12  it's not in one consolidated place where you can
13  get to it.
14  Are you asking to make it an
15  affirmative effort to make it available?
16  MS. KING: Yes, an affirmative effort
17  to make it available. Whether you put it on the
18  website or that sort of thing, I don't know. Yes,
19  publically available.
20  MS. PODZIBA: Other response to that
21  proposal? Is there anyone for whom it's not
acceptable?

Alvin.

MR. WILBANKS: It seems to me when you use "such as," that's creating a lot of confusion, making it "but not limited to," for the students --

MS. PODZIBA: Wait, where is that?

MS. BRIGGS: On Page 3, the left side.

MS. PODZIBA: So as relates to the proposal to make it publicly available?

MR. WILBANKS: I was going to use "such as, but not limited to".

MS. PODZIBA: So you're proposing "as, but not limited to"?

MR. WILBANKS: I would propose that we not use the standalone "such as."

MS. PODZIBA: Any other discussion of make info publicly available? It sounds like that's acceptable to everyone.

Audrey?

MS. JACKSON: I'm just wondering if
there are any confidentiality issues with regard to that?

MS. KING: No --

MS. JACKSON: They're not? Ok, cool.

MS. KING: Yeah, this is only at an LEA level.

MR. ROONEY: So, can I just clarify. I think there are some LEAs that are very small, and I think Rich is having the same reaction as me, that not just small charter schools, but also particularly in some of our states with rural areas, this may be -- it would be an issue for the state. And we explicitly say that one of the reasons we may ask for the states to exceed one percent at the district level is that you've got a small number of students in your tested population, so if you could recruit kids with the most significant cognitive disabilities, that would take you over one percent. I do think we need to make sure we be
careful about FERPA connections for small populations. I don't know that off the top of my head we've got a -- well, Judy is making an exception. I think it needs to be run by our FERPA, the Federal Education and Privacy Act, United States v FERPA.

So we may want to check on that language to make sure we've got the right caveat for that, but I do think that's probably important for us to have in there.

MS. PODZIBA: Tony, do you have a question on this?

MR. EVERS: Just a question. Who is submitting what?

MS. KING: Sorry, so, it could be -- so here it will read "a state must make publically available" information in i through iii.

MS. RIGLING: Just to be clear, this is not something to us. This is something either the state or the districts would have to make publicly available.
The state is our grantee, so I think the expectation would be that the state makes this information publically available. But it would not be something that is reported to the Department. This would be something the states would make available in some manner as the state deems acceptable.

MR. EVERS: What about the proposal? What is the intention of the subparagraph?

MS. KING: So I will tell you the intention, and then let's agree to make sure that we're accomplishing that.

So the intention is that an LEA has submitted information justifying their exceeding of the one-percent cap, and we just want the information that they are submitting to justify their exceeding of the cap to be publically available.

For example, an LEA has said, We are an LEA which includes a hospital serving very high need, for example, premature children, therefore
1 we are exceeding the one-percent cap because our
2 population disproportionately falls under the
3 category of children with the most significant
4 cognitive disabilities. So we have exceeded the
5 one-percent cap, and this is why.
6          MS. PODZIBA: On this proposal?
7          Derrick?
8          MR. CHAU: Actually it seems like when
9 you read the rest of the section, it talks about
10 "a state must not prohibit reviewing information"
11 and then "provide appropriate oversight". I don't
12 now how they can make that information publically
13 available.
14          I'm wondering if the publically
15 available piece is really about the waiver in that
16 section iv.
17          MS. KING: No. So Derrick, I hear your
18 point, and I think you're right, and I think
19 actually it goes in romanette two.
20          Because, to Tony's point of what is
21 being made available; what is being made available
is the information submitted provided under romanette ii.

MR. CHAU: Ok.

MS. KING: So maybe that's where it goes. Because there are two different -- when we get to the other piece, we'd also like to make available the state-level information, but here we just want to make available the LEA-level information.

So maybe it's "the state must review and provide publicly the information submitted by the LEA justifying the need of an LEA"...

Maybe those are the right words.

MR. ROONEY: So, look at the screen where Judy has tried to capture that discussion.

(Brief pause.)

MS. PODZIBA: Yeah, that works for me. Thomas?

MR. AHART: My trouble with this is related to a discussion we haven't started yet in that -- so.

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I have a district that has a seventy-five percent poverty rate, and we have a lot of refuge students, and the chances of my district exceeding the one percent is tremendously higher than or surrounding almost all white ninety-five percent upper middle income families.

If they go up to .99 percent, that doesn't red flag anything, and the chances of that being -- they will put it in an assessment being inappropriately implemented, in that context, versus my district perhaps bumping up against one percent now and then, or occasionally going over, and then only reporting out those districts that are exceeding the one percent, to me flies in the face of the intent of the legislation since the "state may not exceed".

Where you have concentrations of certain populations where the appropriateness of the alternative assessment is more prevalent, I would say that the biggest problem in my state, although I don't think it would be exclusive in my
state, is not those districts that might be
bumping up or creeping over one percent now and
again, it's those that are safely staying under
the one percent -- you know, I know it's not
necessarily a cap, but under the one-percent state
cap, and have lots of freedom to inappropriately
use the alternative assessment.

So I think that the pressure is being
misapplied here terms of the state level trying to
protect that one-percent cap.

MS. PODZIBA: I was going to let Audrey
get a comment in on that.

MS. JACKSON: I was just going to say
that I think you're right, Tom, and again it's not
in my area of expertise totally, but I think
you're right in that the paperwork and the burden
for providing explanations falls to those over one
percent, but it doesn't necessarily mean that no
one will be paying attention to areas that are
disproportionately high, because the state's
motivation is to fall within the one percent

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So, even though they may not be receiving paperwork and justification from those under one percent, they're clearly going to be, I would imagine, paying attention to areas that are well above what would be expected.

MR. AHART: Well, the Guidance certainly doesn't suggest that. And part of what I'm trying to protect against is, once again, some of the programming that some high-poverty districts do actually attracts more students because of the program that's offered, and this is one more suggestion to the public that these schools aren't performing.

I would argue that in many circumstances that the districts are performing very well and in fact they're providing services that no one else is willing to provide, and hence they become a magnet for some of the most learning-challenged students. And the message that gets sent out to the public, although not
direct, has an internal continuing suggestion that
these students are not being served well, and I
think you could validly argue quite the opposite.

MS. PODZIBA: Liz?

MS. KING: So, a couple of different
things. I would just remind us, we're talking
about children with the most significant cognitive
disabilities.

MR. AHART: Yeah, so am I.

MS. KING: So we are expecting a
proportionate representation across various
demographics and situations. We're talking about
children only with the most severe cognitive
disabilities.

And then the one thing I would add is I
absolutely agree with you that this is not --
either the transparency here or the one-percent
cap here is not enough to make sure that all
children are getting the right assessment. That's
absolutely true and we can't put that weight on
here.
The purpose of this is to provide the information publicly, so that in the event that it is a justification of our explanation that everyone would be comfortable with -- we can all see that and know that and understand that -- and if it's an explanation that indicates the children are not being well served, we can all see and know and understand that, too.

So I think the fear is that allowing this to happen kind of in the dark of night, which is sort of what -- not even -- I mean, this is not changing the force of law in the -- this is not creating a new cap, this is not creating new state authority to crack down on an LEA, or advocate authority, you know, in the context of suing under civil rights law or the federal government or anybody else.

This is making publicly available the process, so there is a greater opportunity to understand and see this sort of justification and rationale.
So, I will say, for example, if the justification and rationale were, We serve a high concentration of children in poverty, I think pretty clearly, within a variety of communities, that would be looked at as not sufficient justification.

Now the state hopefully will also look at that and recognize that as a misapplication of the alternate assessment, right, but this information needs to be made transparently available.

MS. PODZIBA: Let me give Janel --

MS. GEORGE: Sure. Just a quick point to Thomas' concern. I again think that this information will provide more clarity, more transparency, which is definitely the point.

We're certainly -- and I don't think you in any way were implying that high numbers, for example, of refugee students automatically means you have high numbers of students with intellectual disabilities. I don't think --
MR. AHART: No, I'm not saying that.

MS. GEORGE: -- you were implying that at all.

MR. AHART: I'm not saying that.

MS. GEORGE: I think the implication was that if you're dealing with different populations with challenges, that information might be misinterpreted.

Again we're talking about a very narrow exception of students with the most significant cognitive disabilities. And if anything, I think the more transparent the information about the students you're serving should help inform the public about some of those challenges. But again, that's a very small segment of the population.

And I do hear you in terms of some times information is misinterpreted, but it's my hope that it will really kind of list and provide more transparency about the different populations that LEAs are serving and the different challenges that they're faced with.
MS. PODZIBA: Ok, I'm going to -- Aaron

is it on this item?

MR. PAYMENT: Yes.

So I have to give you a really quick affirmative answer, and then I'll address my question and my comments.

I am confident that all of this research that came to the one percent is devoid of anything reliable with regard to the American Indian populations. We are chronically left out of all of these studies that determine that the one-percent threshold is the appropriate threshold.

I think there is a huge underdiagnosis with a neighboring country, or with autism, or special ed, and then we have to compound the impact of the low economic status of people in this generation who don't know how to advocate for their children.

So all of that that people went through about twenty-five years ago, thirty years ago,
we're now starting to go through as we become empowered and advocate for our children.

So when we use a threshold of one percent, so this is going to sound confusing to you because I'm not on anybody's side, when we use a threshold of one percent, I think the threshold is a drastic undercount in our population, and I think picking a static esthetic number is kind of nonsense. But it's been picked, so we have to work with it. It's been picked.

There is a safety valve with respect to the Secretary's authority to grant waivers, so I think really what we do is try to give guidance on the appropriate times when we would provide those waivers.

So, I'm addressing the data issue, so this is a data issue for me. So, when the states have to report out, you know, they're one percent and not having the transparency at the federal/local level is like trying to do a research project and not being able to unpack the
elements that make the final statistics, and that
is in and of itself nonsense.

So, I think that for me, we already
have the difficulty of trying to get to the data
that affects our people, and we're already left
out of these national studies because of the small
incomes. Go research this if you have never
thought of this before, you will find out the
disparity that exists in that issue. Then it's
more important for me as a tribal leader and
tribal leaders across the country to try to get to
that information. And if it's hidden within the
state statistic, then we can never get to that
data.

I think it is about advocating. It is
about going and being able to find out what's
happening on the ground in a local district. And.

I heard behind me the word shaming, and
it's not about shaming. It's about best
practices. I don't think most governments and
most school systems are about trying to find ways

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to get out of it. I think, once you understand it, you know there's a purpose to educate our children, you find a way to do it.

I don't think it's about shaming at all. I think it's about demonstrating what school districts are doing so that you could try to do better.

MS. PODZIBA: Tony?

MR. EVERS: Great conversation.

I'll just amplify something that Thomas was talking about. In our state we have open enrollment, public school for enrollment. Kids can go any place they want to in the state of Wisconsin. And if it's not in your state it will be coming soon.

And we have areas of the state that are probably better off and offer more robust programs than others. In those cities, in those school districts, parents choose to have children with cognitive, significant cognitive disability situations openly enroll into more robust programs.
where they can probably succeed at a better rate
dan where they came from.

And this is just a push, pull thing.

It's not really about shaming and whatever. But
if a district bumps over and a state may come in
and challenge this district to do better, likely
those children that open enroll there, because the
districts do have the opportunity to stop that,
will be sent back. And it's going to impact kids,
you know, individual children who will not be
getting the services they got prior to that.

I don't think it's something we can
solve, but you have to understand some of the
consequences here is that some children will be
served in a less robust, helpful environment.

MS. PODZIBA: So I'll just let it keep
going.

Ron, you're up.

MR. HAGER: Thank you, and I guess I'm
going to do a rolling comment.

But to start with, to Tony and Thomas'

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comments, and I may seem like I'm parroting your concerns right now, Mr. Evers, but the whole statutory scheme, which is reflected in this requirement, and it's all in the prohibition under local cap in the statute, the state may not impose a cap, that's A. B, except that a local agency, LEA, that exceeds the cap applied to the state, which is the one percent, shall report to the state, and then that group is subject to oversight.

So that's the language in the statute that's reflected in this regulation. And the whole point here is, and I think that was Alvin's point about "such as" and "including," you know, it's not based on socioeconomic status. It's not based on, you know, the type of disability. It's based on the criteria of most significant cognitive disability.

And if the LEA can report back to the state the reason why we have more -- The reason why it exceeded the cap is we have open enrollment.
and these people paid into our program, then the oversight might just be, you know, to look at the criteria and say, Ok, fine, we're done. So that's the A part. So the justification could totally fit within what you're suggesting.

And then the request of to it be public, again, it's not about shaming. It's about, Ok, we're looking at the information that's available, so we're not really--

So I'm just saying that your points are well taken, but this is kind of the way the statute is.

So you could have a school district that's totally misapplying the standard, but they're under one percent, and they're not flagged. That's the way the statute works.

MS. PODZIBA: So, Ron, I think the piece you may not be hearing is the concern, for example, about the newspaper article that comes out when that's out.

That's what I think people are getting
to, that schools that may be over one percent will
get some attention that's not helpful. I think
that's the way --
MR. HAGER: Can I respond?
MS. PODZIBA: Yeah.
MR. HAGER: The response is we have a
great program in our district. They're tracking
all these students, and we're serving the best we
can. And that's it.
MS. PODZIBA: Well, I just ask you to
take that in, because I know that you might have a
solution for how to respond to it. But I think
that's what people are trying to make understood.
Tom?
MR. AHART: That's part of it, but part
of it is, and I don't think this is being heard,
is that the suggestion here is that there's only a
problem that the alternative assessment is only
being misapplied if the district exceeds one
percent, and that's ridiculous. I can tell you
that that's ridiculous. And that's what's
completely ignored here, it feels.

So then it does become, the theme of it does become, The only time we pay attention is if you've exceeded one percent; and the message to the public is, If you have exceeded one percent, you're doing something wrong, and you have to make up some excuse for why you're doing that, and if you don't exceed one percent, everything is absolutely fine."

And what I would argue, and you can look at this by district and see what programs are offered, because there are schools that are set up to better meet the needs of some of these students that have significant cognitive impairments. And there are also districts that are set up to push those students away.

MS. RICKER: Yes. I know.

MS. HARPER: So if the real issue is equity of service and fidelity about implementing what the intent of the code is, then I think that some of these guidelines are misplaced and ill
advised.

MS. PODZIBA: I'm going to take the comments of all the people, I've got a list, and then we'll take a break.

Rita, you're next.

MS. AHRENS: Sure. I can appreciate the desire to highlight schools that are doing well and districts that are doing well in terms of these assessments that are being administered, but I think, you know, the parents that we've been working with want the transparency in the data because they have fears of overidentification, and they have told us that without the data at the district level of the group of students that are being identified to what levels, they cannot press the district to make -- they can't advocate on behalf of their students for more effective policies.

And so from the parents' perspective, you know, it's better to have the transparency, because in some cases, and I think that some LEAs

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are doing a good job and some aren't, and we've
been told there is an inconsistency at the
district level, even in applying state guidelines
for the definition of students with the most
cognitive -- severe cognitive disabilities, and
without that data it makes it very difficult for
our parents to take any sort of action, especially
for parents who are limited English proficient,
who already struggle with navigating and
understanding, you know, legalese and other
things.

So having this data is just another

piece that they can utilize.

MR. AHART: The data is one thing and
information is another. And when data is
presented as information, because you have a cut
line there that may or may not relate to the
quality of services, then I would suggest we may
be actively, although not intentionally,
misinforming the parents who need the best
information.
MS. PODZIBA: Let me get a few more comments in.
Mary Cathryn.

MS. RICKER: Are we still on proposed four?

MS. PODZIBA: Yes.

MS. RICKER: Because my comment is on --

MS. PODZIBA: That proposal?

MS. RICKER: No, it's on something --
MR. PODZIBA: If you could hold off an that 'till after the break.
Liz?

MS. KING: So sort of going through the two different pieces, the public pressure piece, absolutely. I mean being fully transparent, that is our objective. We as advocates in our role, recognizing your role is as an advocate as well, but as advocates in our role, we want this information to be able to pressure systems to change that are not doing well. And realizing
1 this is just one data point, it doesn't tell you
2 anywhere near enough about whether a system is
3 serving children well, but it is an important data
4 point to this piece.
5 And then this idea, this concern about
6 creating a binary Every district over one percent
7 is not serving children well; Every district under
8 one percent is serving children well, I absolutely
9 hear that as well. It's important to remember
10 that IDEA provides individual protections at the
11 child level that are unaffected by all these
12 provisions, and that will continue to be the case.
13 I mean, this is something we're worried
14 about because one percent is high. One percent
15 represents more than is likely representative of
16 eligible children within the population. So it is
17 very much the case if we think about the research
18 saying that, you know, we are really talking about
19 point five I think was one of the numbers. Point
20 five percent of children, there's a big gap
21 between point five estimated to be eligible and

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the one percent. So that's a fair concern, and that sort of speaks to, this is one tool, you know, in a toolbox full of ways to make sure that children with disabilities are being well-served.

The sort of two pieces that I'm interested to hear an alternative way that you would address them, other than providing public transparency about the process, is first, to this issue of historic inclusion.

So Aaron raised the issue of the inappropriate identification of native children as having a disability. So native children are grossly overrepresented in special education, and that's deeply culturally and historically loaded; and children of color are overrepresented specifically in the intellectually disabled category, those children who are most likely to be identified for inclusion in the alternate assessment.

So there is a deep -- there is an issue here that is not just about disability but is also
about race and also about status of the native child.

   So, thinking about the way those have worked, how can we help to ensure that there is a remedy to that historical problem using this tool in this way.

   And then the other question that I think -- we need to hear, if there's a better way, given the degree of flexibility provided to LEAs, because there is no LEA cap, and because the state has explicitly prohibited it from imposing an LEA cap, what other ways can we ensure that this process, which has all this flexibility, is being fairly applied without having public access to this information -- this data, this information about what is happening at the LEA level.

   MS. PODZIBA: Delia?

   MS. POMPA: It seems to me that we've agreed on the goal of transparency and not singling out those over one percent and those under, because we don't know the underlying
reason.

So one way to do this would be to make
a transparency about the LEA period, how many kids
they're excluding or not assessing because of
severe cognitive disabilities, rather than just
those over one percent. And if you've made that
data public, then advocates, parents, educators,
could make a judgment about why it's point five,
why it's one, why it's one point two.

And you've reached your goal of
transparency. You've reached your goal of not
shaming individual districts if they go over one
percent. And you've allowed for some
investigation by legislators and stakeholders
alike.

MS. PODZIBA: Leslie?

MS. HARPER: I'm not a statistician.

That was my dad, who I would go to with all of our
needs in Indian country education, who spent a
decade running our school. May he rest in peace.

Now I've got to rely on other folks a few more
degrees removed from us and send the questions out.

So what happened to our previous discussion around -- we discussed a range of this percentage, and although we may be talking about the one-percent cap, or, you know, you've got to cap this one percent of the kids who were identified, you know, and who are taking it, I mean, couldn't we in our Guidance say, hey, states, let's report on the range of percentages.

We know some of them are reaching that one percent, but they're kind of harbored, and there's something going on there, you know. And if they're over that one percent, then, you know, we're saying they're overrepresented above that school that's at point ninety-five percent. You know, we're not asking for that.

So this is what I'm getting from home from our special ed departments and from our tribal nation's education department, is that, why are we not describing a range of percentages.
So it's not asking to change all of our rule stuff. It's just saying, Hey, states, let's talk about what's going on, you know? It's talking about more transparency, and it's talking about more reporting.

MS. PODZIBA: Ok, I'm going to --

MS. HARPER: What happened to that discussion?

MS. PODZIBA: I'm going to take a break. It's 11:00. Let's take a break to 11:15.

Kay, did you want to say something to this before we break?

MS. RIGLING: Yes, please.

I just wanted to make a point that actually under ESSA they have added a requirement to the state and local report card requirements to report "the number on percentages of students with most significant cognitive disabilities who take an alternate assessment by grade and subject".

So I think that will be a new reporting requirement at both the state and district level.
1 in the future.

2 MR. HAGER: For all districts.

3 MS. RIGLING: For all districts. So

4 that might help in some of the discussion when we

5 come back after the break.

6 MS. PODZIBA: Let's take a break 'till

7 11:15.

8 (Recess taken.)

9 MS. PODZIBA: Alright, I think we're

10 ready to get started.

11 So I'm hoping that we can pick up the

12 pace a little bit, because we've got a lot to do

13 this afternoon. The hope is that we get through

14 all of the assessment issues.

15 So, I'm going to give Kerri and Alvin

16 the last comments on this, see if there's

17 agreement to add this, and if not we'll move on to

18 the next item.

19 Kerri?

20 MS. BRIGGS: I think that the question

21 I had before the break sort of raises which is in
the state report, which I think also now is 
required at the LEA level, they have to report on 
the number of percentage of kids with the general 
accommodations and alternate assessments. But I 
think this language is unnecessary. I do want to 
say that I think adding regulations that aren't 
necessary is not a good idea, particularly with 
the RDN, the LEA requirements. 
So I think, particularly since not all 
LEAs are not only at or around, but above. 
MS. PODZIBA: Alvin? 
Mr. WILBANKS: I would agree with 
Kerri's statement about the regulations, 
additional regulations not being necessary, 
however, if it does go in, I would question the 
use of disproportionality here. 
In the ten or fifteen minute previous 
discussion, we talked a lot about what I think are 
reality and court opinions. As a practitioner we 
don't like bad headlines either, but I am not sure 
that I will purposely try and come up with any of
this because it doesn't have any really
relationship with what we're supposed to be doing
here.

What we're trying to do I think is
determine which students need the alternate
assessment and is that criteria what they should
have, if they are selected for that, and as a lot
of the reasons were suggested earlier, who gets in
and how many, whatever, should be based on that.
It shouldn't be based on other things that
sometimes get caught up in the discussions.

And I would just like to say that I
think our job actually, you know, as a
practitioner, we do have some students that are
homeless, and I need to be an advocate for those
students, and I believe I am. We have some that
have a Rolls Royce or Mercedes. I have to be an
advocate for those students. I have to be an
advocate for all students. I think the purpose of
the legislation is to make sure those students who
need more get more, and those that need to be
brought up to a threshold be brought up to a threshold, and all the things in between.

So I do not see really a need for the additional regulation. If we do, I'm really concerned with where the disproportionality goes.

MS. PODZIBA: That's what I'm hoping we can get to once we finish this. So I'm going to call the question on this.

We've spoken about this item for like forty-five minutes.

Liz, yes.

MS. KING: Yeah, there is a confusion.

So I can address the confusion or we can make a decision.

MS. PODZIBA: If you think the confusion will get us to a better outcome, go ahead.

MS. KING: Yeah, so Kerri was saying that it's already required that to be reported.

The distinction is the reporting of the justification be reported by the LEA, not the
percentage of students taking the alternate assessment.

MS. PODZIBA: Thank you for that clarification.

Janel, do you have another clarification or is it the same?

MS. GEORGE: No, I had just a point. To add again, not to belabor this, but there are significant consequences, as I'm sure we all know, for students who take these alternate assessments. Most of them are taken out of the general classroom. So this is not something to be taken lightly, which is why we are really providing clarification about the justifications for these waivers.

These students are ten percent of all students with disabilities. So this is significant. We can't lose sight of the implications, the consequences of taking these alternate assessments on students.

I look forward to having the
conversation about disproportionality because it
is a very real and pervasive issue, and it is
consistent with again the point of equity under
Title I of the IDEA and the purpose of this law.
So that is something that I think is consistent
with this law and its focus, and I understand that
we'll discuss this soon, but I just again want to
underscore that this is significant for the
students, for the parents, and so transparent
information about the consequences of taking these
assessments is really critical.
MS. PODZIBA: Ok. Is there anyone who
can't live with the proposal for the new iv? Is
there anyone who would dissent from that?
Ok, Mary Cathryn, I know you had
another item in this section before we get to
waivers, and I realize that's where we want to
get.
MS. RICKER: Yeah, I have a question
about language at the bottom of three, and then a
actually a question about four, but let me start
In romanett ii, Alvin had earlier suggested inserting "encouraging but not limited to," because I had brought up two weeks ago unforeseen disasters impacting the health in the community, and I specifically brought up Flint, Michigan, but I think that we also know that there are enough headlines around the profound impact of Zika virus in communities in central America right now.

We don't know what that next thing will be. There always seems to be a next thing, and I think, absent -- I completely agree with the sorts of things that are listed. And having worked in and represented the teachers at a school, Bridge View, Patry 12 School (phon) at St. Paul that was specifically built from the ground up to only serve students with significant cognitive disabilities: so extra wide hallways that allow hospital rails to go down, different sight lines for students with devices to be in stand-up
wheelchairs, pool therapy, adaptive physical education, really robust...

So I absolutely have seen first hand the attraction of that to students and families in surrounding communities, as well, rather than enrolling in their home district. And at the same time I have seen now in this position enough of our members and with other educators across the country deal with the unforeseen circumstances that impact the health of the community fairly profoundly, that I do believe it is--

MS. PODZIBA: Could you tell me specifically what it is that you want to add.

MS. RICKER: So, my suggestion would be, where we have school community or health programs that draw large amounts of families, you know, either right after -- like right before the word "or," some place where we could list something like, you know, "such as unforeseen disasters impacting the health of a community".

MS. PODZIBA: Ok. Comments on that
1 proposal? Natural or manmade disasters?
2 MS. RICKER: Human-made.
3 MS. PODZIBA: Alright --
4 MS. JACKSON: Do you have "such as"?
5 MS. PODZIBA: Any comments on this proposal?
6 Thomas?
7 MR. AHART: We're just talking about the bottom of Page 3, right, and the top of Page 4?
8 MS. PODZIBA: Right. So that is now, "such as but not limited to," and it's just adding another potential example.
9 MR. AHART: Yeah, I guess I would suggest that we just strike all of it. The point is we're not serving kids who ought to have this, and we're not serving kids who ought not to.
10 MS. PODZIBA: So you're proposing to strike what?
11 MR. AHART: Everything after "alternate assessment".

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MS. RICKER: All the red, that's the other option.

MS. PODZIBA: Response to that proposal.

Richard?

MR. POHLMAN: To the extent I become a broken record, I think that everything that is being said is extremely valuable, and that, to the extent that our comments can have an impact on the Department's approach to Guidance rather than regulation, I think that there is a role for this level of specificity within Guidance that can further clarify regulations.

I don't think the regulations are as-- or the act is unclear now that items like this need to be considered, because that list is so incredibly long. I do wonder if we don't start encroaching on the space where Guidance is very helpful, rather than in spending time enumerating all the things where this could be used.

MS. PODZIBA: Patrick or Kay, do you
1 want to say something about why the Department
2 thought it was important to include examples?
3 MR. ROONEY: I can try. I think
4 when -- so I mentioned, in the beginning, that
5 this language was pulled from a different section
6 of the regulations, and when we put that in there,
7 I think our intent was to provide some support for
8 the one-percent cap that was on the percentage of
9 kids that can be included and why it might be
10 impossible that districts would go over that one
11 percent.
12 And I think all of that was done in the
13 regulations, so providing it was not in the
14 statute or in No Child Left Behind.
15 But by adding those descriptions it
16 provided a little more clarity to the field as to
17 how those might apply to people if laid out.
18 I do see the point that really just--
19 because it suggests, to Kay's point earlier, that
20 means it is guidance to the field and not a
21 requirement that these are the list of possible
I don't know if Kay would add anything to that.

MS. RIGLING: No, I don't have anything.

MS. PODZIBA: Lynn?

MS. GOSS: And I guess I just wanted to remind that every alternate assessment that's taken is an IEP decision, and so the parents are at the table, the appropriate staff are at the table, and so whatever circumstances are in your community would be vetted for that IEP process.

MS. PODZIBA: Marcus?

MR. CHEEKS: I wanted to weigh in just a moment about the subject matter of Guidance.

For some reason it appears that we're getting an impression that Guidance doesn't carry any kind of weight whatsoever. And from a state agency standpoint, I would argue differently.

Often school districts request information about different positions, different
directions. My response, which is pretty much what the reference is going to be between the highway between the district and our state agency, is a lot of times lead by what I am seeing in non-regulatory guidance.

In as much as it may be coupled with the specificity of the law, it also is viewed through the lens of the practicalness of the guidance that is shared.

So I don't want anyone to take away from the fact that we may not get it written into the law and all of a sudden it's not as value added, but the Guidance still carries that point of weight to the point where we still guide the practice from the state agency's standpoint.

So I just thought I'd share that piece.

MS. PODZIBA: It sounds like the comments have been supportive of the proposal to delete the red of romanette ii.

Ron --

MR. HAGER: I wanted to have a
1    follow-up with Patrick.
2         You had mentioned that this material is
3    currently in the regs and it's currently being --
4    well, it was being used for AYP. Were there
5    problems with the districts using this
6    information? Was this hard for, you know, the
7    programs to comply with? Is there a reason?
8         I mean, I would favor leaving it in.
9    MR. ROONEY: So I don't know that I can
10    answer that question, Ron, because I don't know
11    that people have a problem with it.
12         I will say that there wasn't a "comply
13    with" aspect to it. These were described -- these
14    were "such as". So they were just examples to the
15    field of reasons a district may go over the one
16    percent of kids who scored proficient on the
17    alternate assessment, which is where the current
18    regulations are.
19         I think, because the cap is now on the
20    assessment, if we were keeping it in, I think it
21    would be removed from where it is in the current
regulation because that is around calculating it by D, which is no longer a relevant term under ESSA. So if we wanted to keep examples in the regulations as opposed to putting them in Guidance, I think this would be the place to do it.

MS. PODZIBA: Ok, so I guess to move us forward, because it looks like it's moving in that direction, is there any dissent from deleting this paragraph, for the red example?

Ron?

MR. HAGER: Just a point of clarification. If you delete the red, you still would have the language about the -- you know, the state still has to require that school districts have to provide the justification to the state, and then the qualifier that we had in the reg this morning, it would still be there in iv.

MS. PODZIBA: Correct.

MR. HAGER: With that clarification, I'm fine.
MS. RICKER: We're going to Guidance, or that's a separate issue?

MS. PODZIBA: We're not negotiating the Guidance, but I think the Department will take those in mind.

Aquelha?

MS. JAMES: Just a clarification for the words "and review information".

The state is required to submit that information in the fact that we're -- not monitoring, because the states are required to submit it, could we think about changing the word "review information"?

MR. ROONEY: Just to be clear, the state does not submit information to the Department for this. This one is about, if a district exceeds one percent, the district provides information to the state and the state reviews it, and then the state provides oversight of those districts.

There is no expectation for them then.
to submit that information to the Department under this section of the regulatory statute.

MS. JAMES: I agree with you. So the recommendation is to receive information instead of review it.

MR. ROONEY: From the statute, the statute is to review information. And I think "receive" is a very passive term.

If you look at the statute on Page 88, it's totally very different. It's on the bottom, Roman numeral II, it's the prohibition on local cap where it gets -- "except by a local educational agency exceeding a cap under this clause shall submit information to the state justifying the need to receive such cap".

I think our preference would be "review" rather than "receive," because it sounds as if it's providing an expectation that the state is willing to look at that information and not just collect it.

So that would be our preference. I'm
open to discussion.

MS. PODZIBA: Ron?

MR. HAGER: That was the thing I had mentioned earlier this morning, but I do want to I guess point out that in sublet iii, it says "provide appropriate oversight to an LEA that is required to submit information to the state."

So it's there after the fact. So you put in the statutory language that they are required to submit it. It's just not in where you have the review.

If you look at the end of three, we have that bolded language, which I believe we added in, which is the stuff that is in the statute. So you have it in, the requirement is there, but it's just in a different spot.

As I'm reading this. I may be misreading it.

MR. ROONEY: It's still a question that the district is submitting to the state, and then the question is -- because we write our
regulations about the expectations for the state, and not the district. The requirement for the district is that state would, when it reviews or receives the information the state has submitted, right, the action is the district "submitting," but a regulation is written as requirement for the state, which is an awkward transition from what's in the language of the law to the language of the regulations.

So for that reason we used the word "review". But they're just going to submit it and then the state has to do something whether it receives it or whether it reviews it. It's a separate choice.

MS. PODZIBA: Patrick, just to clarify, is it the Department wants to keep "review"? I'm not sure if you're open to "receive" or if you're affirming that you want "review".

MS. RIGLING: I think we would prefer review. I think the word "justify," which is the word that's used, that "the LEA needs to justify
1 why it exceeded the cap that's on the state
2 implies some sort of review of that justification.
3 Because "justify" is a pretty strong word.

4 MS. PODZIBA: So is there anyone who
5 can't live with maintaining "review"?
6 Thomas?
7 MR. AHART: So is the implication then
8 that the state would accept or reject?
9 MR. ROONEY: I don't think so.
10 MR. AHART: Require another action?
11 MR. ROONEY: I don't read the statute
12 to say that the state has that ability to reject.
13 They provide oversight.
14 MR. AHART: I don't either, but review
15 would imply to me that they're there to make some
16 sort of judgment, and I felt like if you put
17 "review" in there, that's going to either be
18 interpreted as another action as required of the
19 state, if we go beyond, you know, "receiving," it
20 says "submit," and it doesn't say -- it's pretty
21 clear that the state doesn't have the authority

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under the code to make a judgment on the LEA as to
the --

MR. ROONEY: Right, but if you look at
the next Roman numeral in the statue as well as
the regulation, the state then is required to
provide oversight of all of those districts. I
think you cannot provide oversight if you haven't
reviewed the information.

So I see your point, Thomas, and I
don't read the regulation to say that the state
has a responsibility or a duty or authority to
disapprove a district that wants to exceed -- or
needs to exceed more than one percent of the
alternate assessment.

But they do have a duty to provide
oversight. I think it's hard to do that without
having reviewed the information.

MR. AHART: Could we just use the
language of the statute, then?

MR. ROONEY: Again this is where it
gets tricky in that the requirement in our
regulations what the state must due, and the
statute is written as to what the district must
do.

I don't have a good suggestion. I'm
open on suggestions on how to write it so it's the
state requirement that the district submit, that
the state require that the district submit.

MR. AHART: Adjective would be
"receive," that's what seems most reasonable to
me, in terms of implying an additional step
required by the ESSA.

MR. ROONEY: What if we said "the state
must require the district to submit"? Well, I
don't think so.

I mean, this is about if the district
exceeds one percent. I don't think in romanette
iii, the first one is not prohibiting the LEA from
assessing more than one percent, and two is
assessing the information.

If we could reorder that to get to the
point of the statute, it would say, "so the state

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must require the district to submit," if you want
to use the word submit.

MS. PODZIBA: Rita?

MS. AHRENS: I have a comment on the
word "review". I'm quite fine with it. Because
when we're talking about Congressional intent, I
don't think Congress means for the LEA to submit
information to the state and have the state do
nothing with it, because that would be quite a
meaningless action.

So I think that the implied review of
the information is something that we can't put
into the regulatory language. Thank you.

MS. PODZIBA: So would everyone be ok
with "require the district to submit"? Everyone
ok with that?

I think that takes us then to the
waiver part of the discussion.

Ok, it, Thomas.

MR. AHART: Are we still talking about
romanette iii, which also includes review.
MS. PODZIBA: Patrick?

MR. ROONEY: Sorry, I need to go back and look at what's in the actual statute.

MR. AHART: I would just recommend that we take out the clause "based on its review of this section" under Paragraph C(3) ii of this section and keep everything else, except for that which was already stricken.

MR. ROONEY: Sorry, Thomas, could you repeat the suggestion.

MR. AHART: Sure. I would strike "based on its review of this section". So it would read "appropriate oversight as determined by the state of an LEA that is required to submit information to the state".

MR. ROONEY: So can we flag that, and I need to talk to some colleagues and then come back on that.

MS. PODZIBA: Sure. We're going to just wait for the Department to have a chance to look at that further. Ok, we'll come back to
that. Again, I'd like to get to the discussion of
the waiver section of this, so I'm opening the
floor for that discussion.

Tony.

MR. EVERS: I think the waiver is a
process that we need to kind of narrow down and
make sure that the state's doing the right thing.
However, I believe that a state could
not disproportionately assess students, so on, so
forth. In my opinion that creates an undue and I
think unfair occurrence that a waiver might be
rejected because of prior bad acts. That's
relatively unusual in my experience with the
government and it takes up what usually is a lot
of work going forward. I just feel uncomfortable
with using that opportunity to go backwards in
time instead of forward.

So I would ask for the deletion of A.

And I have another question, but I'll
wait, because I guess this deletion will take some
time to sort through. So I'll talk about that in
a little bit.

MS. PODZIBA: So the proposal is to delete A on Page 4. That's the first A, under romanette ii.

Liz?

MS. KING: Yeah, I just wanted to speak in favor of preserving this.

I think that disproportionality is not conclusive evidence, but it is certainly supporting evidence that there is a systemic problem with the way that children are being identified for and served under the assessment.

So, for example, imagining a scenario here in which either English learners or African-American students are overrepresented in the alternative assessment would suggest that there is a structural problem around the way that those children are being identified for inclusion of the assessment.

But since the entire intent of this waiver is to make sure that when a state is
exceeding the one-percent statutory requirement,
statutory cap, that it is not evidence of systemic
failure to meet the needs of those students.

Disproportionality does suggest in fact
that they are failing to meet the needs of those
students and therefore in fact should not be given
a waiver.

MS. PODZIBA: Janel?

MS. GEORGE: Oh, no.

MS. PODZIBA: Tom?

MR. AHART: No.

MS. PODZIBA: Ron?

MR. HAGER: I just wanted to clarify
another point regarding the disproportionality at.
This is not generic disproportionality with regard
to the Department's process. This is
disproportionality only in giving the alternate
achievement assessment. So it's directly related
to the issue, as Liz said, you know, of the way
that the state is administering or ensuring the
administration of the alternate assessment.
So disproportionality includes taking that assessment. So I would speak in favor of leaving that in.

MS. PODZIBA: Rich?

MR. POHLMAN: The one question I have, and this may go back to Liz actually, is that where we have jurisdiction, specifically mine, the District of Columbia, that is very homogeneous with respect to its assessment student population, are there any carveouts in which we can imagine that a jurisdiction -- so like an entire state, so DC being a state that is entirely homogenous might have a very narrow carveout because its disproportionality -- or its disproportional population is also -- its population is also disproportionately filled with students who look a particular way or often have homogenous populations.

Does that make sense? I'm trying to like both dance around terms here and get the point across.
I'm sure there's research that's been done on this, but I just know that we had a big push several years ago to reduce the number of students tested on the alternate. We got underneath that cap. And I know there's more, work to be done, but I was concerned that we're going to have another under one percent students to come under this new one-percent cap, and mainly to apply for aware. This disproportionality requirement might kick out.

I'm wondering if there's a carveout that we can make that would be satisfactory.

MS. PODZIBA: Audrey?

MS. JACKSON: I have a big picture question. I don't know if she wants to respond first and then I ask can ask it and then you decide?

MS. PODZIBA: You're up.

MS. JACKSON: Alright, I'm just wondering what happens if a waiver is not granted, like what are the ramifications?
1 So, and maybe everyone else knows this
2 and I don't, but I'm just wondering, you know, I
3 can imagine a state like Massachusetts, which is
4 where I'm from right now, it's about one point
5 six, one point seven percent. And it's not going
6 to go down overnight to under one. So I can
7 imagine a situation where some LEAs are
8 appropriately over, and justification resonates
9 with both the LEA and the Department of Ed, but
10 where other LEAs may not have a proper
11 justification. And so on the state level, I'm
12 curious how, if waivers are only granted on the
13 state level and some LEAs are appropriately over
14 and some may be not, what actually happens if a
15 waiver is denied?
16 MS. PODZIBA: So, Patrick, could you
17 answer that?
18 MR. ROONEY: I can try to. I may ask
19 Kay to.
20 I think if a waiver were to be denied,
21 the state would either have to assess fewer
students on the alternate assessment and determine
that some students -- in order to process this,
y they would come in, to figure out -- and work with
its districts to figure out and reassign students
for different assessments.

Or the alternative I guess would be the
state would be in the out-of-compliance issue.
That certainly would not be our hope or
expectation, and if they're out of compliance then
there is a range of actions the Department can
take against those states out of compliance, from
putting a condition on its award, to labeling on
the CSI risk grantee, which has potential
implications, to potentially withholding funds.

I'm not trying to make any sort of
threat on what may happen. I don't actually know.
There's just a range of actions that we can take
whenever a state's out of compliance for any
aspect of the law that are the same regardless of
the violation of the lack of compliance.

MS. JACKSON: I guess I'm just
wondering, where is the lever for positive change?

If the waiver is something that's
always likely to be approved -- I'm not saying
that that's the case -- but if it is, then I'm
interested in what the lever for positive change
is, if they're always likely to be approved,
because you can't supersede the whole IEP team.

MR. ROONEY: I was going to point us
to -- and that's why it was good to do the whole
thing at the beginning, romanette v, on Page 5,
where a state is providing a plan for how it's
going to address issues and make sure its
identifying the right assessment for all kids.

If there is some disproportionality or
if there is, you know, problems with the way the
guidelines are being implemented for some reason
and some kids are maybe getting the wrong
assessment, that this would be the state's
timeline to try to work with its districts to
address those issues and then bring the percentage
of the kids taking the alternate assessment down.
MS. JACKSON: And so in that case, to Richard's point -- and correct me if I am wrong, Richard -- that maybe you wouldn't need to clarify particular conditions in which, you know, it would be very understandable for a state or entity to go over, because it would likely be approved as long as they're having a thorough plan to address.

MS. PODZIBA: Hang on, I don't want this to be a conversation back and forth, because that's --

So Richard's suggestion was one item within a discussion of a proposal to delete this section.

Tony?

MR. EVERSS: Yeah, I don't want to leave people with the idea that I'm not concerned about disproportionality in any arena. And it still exists in C on the bottom of Page 4.

I'm just saying the issue is prior year. I don't know how many -- I can't think of any. Maybe someone will find that out for me,
where prior actions -- well, it says prior bad act or acts will automatically disqualify a school district from getting a waiver. That's the issue.

It's not dealing with disproportionality as you have in C, the second page. It's still there, part of the plan.

So I just want to make that clear.

MS. PODZIBA: So, Tony, could you perhaps further explain your proposal? Because I understood your proposal was to delete A?

MR. EVERS: Correct.

MS. PODZIBA: And prior school year is in a couple of other places.

So is your concern primarily around prior year and changing something about that, or is it all of A?

MR. EVERS: It's all of A, because of A. I don't know how we fix that, because that's in the prior year. I just want to make sure we have been understanding that.

MS. PODZIBA: Liz?
MS. KING: So in answer to Richard's question to me, I think I am not comfortable with the idea of a carveout or an exception for a homogenous state. So a couple of different points on that. So DCPS has an awfully bad record of serving children with disabilities, have violated multiple, different years over the years. So I think it's a good example of a place where there are some systemic and structural problems that need to be resolved.

I also sort of caution that urbanity, or the presence of children of color, or the presence of low-income children, is not a justification for the overidentification -- or the higher identification of children with the most significant cognitive disabilities. I think that sort of -- there's been some sort of suggestion of that brought up a couple of times throughout the conversation. I think it's a good example of why the cap is in
there and why the oversight is in there, because
this is a long-standing challenge that we need to
reverse. It's just something that I would
cautions.

The point here that I just wanted to
reinforce is that we are talking about what is
evidence of a systemic problem. So, to Tony's
point, the value of using prior-year data -- and I
realize why it is it problematic, because getting
in trouble for one year for something that you had
done previously is a little bit challenging.

Except that the prior year data, I am
more comfortable with the standard by which you
are being judged by something that you have
actually done rather than being judge by something
that you might do. And so the prior-year data is
something that you have actually done, and in the
prior year if there was a problem around this
racial disproportionality, then it is like -- and
if in the prior year you had disproportionality in
the assessment, and you are now exceeding the
one-percent cap, it is likely that there is a
relationship and that there is a problem with the
way in which you are providing -- either it's the
guidance that you are providing to IEP teams for
appropriate identification and ensuring that
children are not being identified for the
alternate assessment on, for example, the basis of
race or ethnicity or language status...
or the failure to provide to the
educators the resources they need for the
accommodations they should be providing for the
children can be included on the general assessment
with accommodations for the training that they
need...
or whether it is a structural issue
that extends beyond disability to include larger
racial issues that exist within the state or
within LEAs in the state, ensuring that things
like implicit bias are not interfering with the
identification of children with special ed
services. Or things like that.
So I think that what we're trying to get at here, the purpose of the one-percent cap is very much historically rooted both in the overidentification of children with disabilities as being beyond the scope of the general standards and assessment. So we're trying to fix that historical problem, as well as, specifically in the context of this and the language around disproportionality, the overidentification of children of color and Native American children across disability categories, but disproportionately within the intellectually disabled category because of how loaded that category is, and our perceptions as a society that tie race and ethnicity to concepts of intellectual capacity.

So that's a big charge, and again I will say this is a very narrow tool to address a much bigger problem, and there are a lot of other things we need to do about making sure that children and educators have the supports and the
1 training that they need.
2    But I think that that's why,
3 specifically, the limitations around the waiver
4 are so important, making sure that the
5 Congressional requirement around the one-percent
6 cap is rigorously implemented, as well as the
7 callout around disproportionality.
8    MS. PODZIBA: Janel?
9    MS. GEORGE: Thank you.
10 I just want to underscore that context
11 does matter, and it matters specifically for us in
12 the legal realm, at the Legal Defense and
13 Educational Fund, or LDF, we look at it in so many
14 different practice areas.
15    In our policing work, we look at what's
16 called a pattern and practice of discrimination
17 that targets particular groups, particularly
18 African-Americans.
19    In voting rights, we look at a history
20 and legacy of discrimination and exclusion.
21    And in education we also look at the

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perpetuation of segregation and the mechanism used
to segregate students.

In particular in the special education
realm, we see that African-American males are not
only disproportionately what we call
"misidentified," because they tend to be
overrepresented in certain categories like ED,
emotional disturbance, or intellectual
disabilities, and underrepresented in other
categories like autism.

So for us it's really an issue of
misidentification, and it's part and parcel of our
country's legacy of institutionalized and systemic
racism.

We can't deny that. We can't ignore
it. It informs the patterns and practices that we
see today. If informs the educational
inequalities that we continue to see perpetuated
in our society.

Data tells a story. It is important to
have the data. We're not talking about a
retroactive punishment. We're talking about looking at one year of data disaggregated by student subgroups to inform how this provision will be implied.

Again, we're not talking about a retroactive punishment. You're just providing the data that will be reviewed by the state in making again what is the significant decision about whether this student will take the alternate assessments.

We see again disproportionately for African-American students who take these alternate assessments, they are taken out of the classrooms at higher rates than their white peers.

This is what the data and information tell us. So it is important to have the data. I believe that this provision should remain here because it informs the context and discussion, the purpose, the underlying purpose.

I think to take this provision out undermines the intent of ensuring that only the
students who need it most are taking these alternate assessments.

MS. PODZIBA: Patrick?

MR. ROONEY: Thanks.

Just to Tony's point, I did want to clarify that the Department actually very often takes into account current and prior actions of the state when they're trying to evaluate whether to approve a waiver request.

I appreciate the point you're making, but that is often a criteria the Department uses when trying to determine whether or not to approve a waiver request for a state.

MS. PODZIBA: Tony?

MR. EVERS: So that's part of the regulation that gives them the authority to do that, or that's just practice?

MR. ROONEY: So the statute lays out requirements for a state to submit a waiver. It doesn't lay out the criteria for the Department to then determine whether to approve the waiver or
I can think of a couple of examples off the top of my head where, as part of our example, when we looked at, in compliance with IDEA or Title I, we looked at other aspects of the state's implication of the law to determine whether a waiver was appropriate or not?

MR. EVERS: Can I continue?

MS. PODZIBA: Mm-hmm.

MR. EVERS: This is a huge issue. I don't just view it as a waiver. Currently you have rules of review, I think review, final review of the IDEA. You deal with the issue of disproportionality there? If so, what is the distinction between that and this? Maybe there's no distinction.

So if it's a big deal, and I think it's a huge deal, wouldn't it be better dealt with there than here? I mean, this is a microcosm, a small microcosm of a larger issue.

MR. ROONEY: I'm happy to address that.
issue as actually Alvin raised that point too
earlier this morning when we first brought up the
question of disproportionality.

IDEA asks for data of
disproportionality but it focuses on
identification of students with disabilities,
placement, and disciplinary actions.

It doesn't focus on kids taking the
alternate assessment based on alternate
achievement standards.

So, to the extent this is, you know, an
issue that we want to think about or consider,
it's not captured elsewhere in IDEA or the current
regulation or the statute.

MS. PODZIBA: Aaron.

MR. PAYMENT: So in our tradition we
tell stories in order to fully have an
understanding, so I won't tell you a really long
one...

But I do want to share two things. One
is, my nephew -- and this is interesting, because
I have to wear several hats. One hat is as an uncle, the also another hat is as the former president of our school board, and we have a very good school, very good school board. As an administrator for my tribe, I know what it's like to actually have to follow regulations that are unfair, or seemingly unfair.

But in the case of my nephew, who is high-functioning autistic, he was misclassified as emotionally impaired, chronically misclassified as being emotionally impaired. The other guidance counselors indicated he was high-functioning autistic, and I had to fight a social worker from our own school who kept moving him in this direction, while speaking to my sister and telling her that she caused it because she was an alcoholic. And that's a common practice. It's not unusual. It's a common practice.

So, we have fixed that and our schools now accommodate. But we have the same struggle, because you have only so much money but you also
have to try to address the issue.

But I also wanted to say something on
the importance of data, local data. So the local
school system, we get Impact Aid funds in our
public school system, so they're required to do an
annual meeting on the reservation for the largest
amount of money that flows from the federal
government on Impact Aid to the reservation;
Impact Aid, also for federal lands and Coast Guard
and all that.

So, one of the meetings they came and
presented at our reservation, they are bragging
about the increased number of graduates. And they
were very proud of themselves, that they sent a --
we call it sending a brown face to do the dirty
work. They sent a media person to come and
present the data to us, who worked for them.

So anyway, I asked the basic question:
Statistics relative to what? The graduation
number is not the same as your graduation rate of
performance.
And so we compelled them to -- we paid for a study that they then did to go look under the cohorts and look at two cohorts statistically and see the actual records and determine the graduation rate.

As it turns out, the graduation rate was forty-seven percent, consistent with the state graduation rate, consistent with the federal graduation rate for American Indians. So this is why this is so passionate.

So, because we were able to access local data, we were able to then get a little bit of carrot on a stick, a little bit of shaming, because they needed to be shamed. They were accepting the fifty-percent percent dropout rate and transferring us to nonprofit preps at a rate of three times that of our general population.

Had we not done this, we would have never known that. We would never had had that actual data.

But the good news, the good side of the story is I don't believe they were ever doing any
of that purposefully, and I believe once we
created the effort to look at the local data as a
team, things improved.

We also didn't leave it to them for
referral. We just referred to our own school. Now
all the students want to get into our school,
including all our native people who go to charter,
as well, all the doctor's and lawyer's kids are
all wanting to come to our school. We're the
School of the Academy of Excellence. But that
combination of factors improved the environment
for education for our children.

So I think, as an advocate, as an
Indian person, I want to know whatever data I can
in order to advocate for -- not to shame, but to
work in collaboration as a team with public
educators to look at and fix those areas.

I think more likely than not they will
be likely to fix it once they understand it and
know it.

So this is why I think access to this
MR. PODZIBA: Alvin.

MR. WILBANKS: I certainly did not suggest we not look at data. I certainly did not suggest that we really be aware of what made up the data. But I contend disproportionality can occur apart from any reference to race, discrimination or whatever. It can simply be a criteria of being applied fairly. I think this year back of review, I don't see a reason for it. But without getting into personal collaboration here, I think we need to decide if this is the selection of students with significant cognitive disabilities, to keep the appropriate educational placement in as it should be kept, and I think whatever that criteria is, I believe we are well prepared today that, if not, they should be, and I won't make a federal mandate other than what we already have.

MS. PODZIBA: Tony?

MR. EVERS: Probably my last comment on
this, but, in these regulations around getting a
waiver, again it's my concern that we almost
automatically disallow districts that are
training. And you said that, Kerri. It's about
moving forward. C at the bottom of the page, it
talks about disproportionality, C at the bottom of
Page 5, it talks about disproportionality. So I
don't think there is any lack of sensitivity about
it.

The problem I have is that it pretty
much automatically suggests that a waiver is not
going to be given. And I think that's a problem.
I think Congress generally sought to take it all
away. The Secretary has even put conditions on
waivers, generally speaking. I think this is a
large problem.

I don't believe C at the bottom should
be eliminated. I don't believe that C at the
bottom of Page 5 should be eliminated.

Clearly we have disproportionality
issues and rules that are broader. I'm trying to

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understand this issue. I'm just saying in the small world of waiver approval considering, using past data is not appropriate.

MS. PODZIBA: So it's clear that there is not consensus to leave it in, and there is not consensus to remove it. So that means -- hmmm.

MR. EVERS: Change it.

MS. PODZIBA: So I'm wondering, Tony, if this is a first year, I'm just throwing it out as an attempt to change it, if in the first year it's not prior year, but it's the first year of a waiver, so that in the second year then you have the information that supported the first year waiver... So this kind of constraint would relate to a second year of a request for a waiver, because a waiver had already been granted based on data.... Is that a beginning of a way of changing this to make it acceptable to everyone? It's essentially giving states a year? Aaron?
MR. PAYMENT: Again, based on the principal that I think most will change and improve if given the opportunity, I think that gives them the opportunity. And I would prefer it not, but of that gets us to consensus, I think that that makes sense.

MS. PODZIBA: Other comments about that?

Liz?

MS. KING: Yeah, a couple of different comments.

First, just a general reminder that students with disabilities are general education students first. So, while they have IDEA protections, they are fully included in the ESSA. This provision is about their inclusion in the ESSA, which is why the IDEA NPRM on disproportionately apply, although the IDEA NPRM on disproportionality is just further evidence of systemic problems in the over identification of children of color as having disabilities, and the...
likely continued over identification without intervention.

I think the idea of a waiver is that there is a law that applies to everybody, and now this part of the law that applies to everybody does not in a limited instance apply to you; which is a pretty serious standard to go from. This law applies to a state, to this law does not in this moment in this way apply to the state. So I think it is fair to have rigorous standards for a waiver approval.

Congress could not have required that there be a one-percent cap. Congress could have required the Department, without review, to accept all requests for waivers. Congress could have in a lots of other ways made this meaningless, and instead Congress did not.

There are statutory requirements around this, including the underlying requirement that not more than one percent of children be assessed on the alternative assessment.
So I think that again it is my concern always when we're talking about relative to add one year, or just to add two years, or just to add three years, that child who goes to third grade is now in sixth grade and now they're in seventh grade, and, oh, now they're leaving high school. So I think that we just have to be clear that when we're talking about one or two years is a long time in the life of a child in school. And my concern about the prior-year data, I think the issue here is around the proactivity about it. So I would like to hear more, Tony, about is there an alternative way to identify structural disproportionality as a structural flag around race and ethnicity and people with disability. So is there an alternative to that. And then I would say to Susan, sort of the policy point argument that Susan is trying to make, I would say that the concern I have with Susan's proposal, the intention would be that a
waiver may -- in the event that a waiver is reasonably granted for one year, our hope is that waivers not be granted because they not be needed because the cap not be exceeded.

Our hope is that, in the event that the cap is exceeded, that a waiver be granted because the reason the cap was exceed met all of these expectations and requirements and that that condition would continue not to be the case.

So we are hoping against multiyear waivers, although we certainly realize they are allowed under the law.

But I think the idea here is that we are trying to be very, very careful that when the Secretary determines that this federal law written by Congress does not apply; that it is only a limited instance when that happens.

MS. PODZIBA: Kerri?

MS. BRIGGS: A slightly more general point -- I'm struggling with the timing of a proactive waiver and its anticipated approval.
Submitting it ninety days before the testing windows and I'm trying to think in my head when IEP teams need to make decisions about kids -- I'm just sort of struggling with who this is being matched up.

Because let's say you take it under IDEA 1.5 -- no, 1.3, that triggers some days a whole bunch of IDE teams coming to testing for one year.

For me there's something to consider about receiving data when they are being captured and collected and brought on the very important issue of the one percent cap.

MS. PODZIBA: Yeah, so you're you in the past and future at the same time somehow.

MS. BRIGGS: Yes.

MS. PODZIBA: So I'm getting what you're saying. Ok.

Derrick -- I'm sorry, Lara.

MS. EVANGELISTA: So, speaking from the perspective from a school that deals with a
relatively homogenous population, given that they're all newcomer ELLs, and I think what concerns me about this is that last piece about it only looks likes you're talking about one thing.

You know, we're a school that our graduation rate, our four-year graduation rate has consistently been doubled out of the city and of the state. Most of our students are going on to college. We have a great reputation in New York City for serving our population.

But we have been very negatively impacted by the fact of looking at just one measure for our school, because on the state level, we were actually for a while a focus school because of all of the overlapping subgroups. All of our ELLs are all economically disadvantaged. All of our Asian students are also ELLs and economically disadvantaged. So that concerns me, that piece.

So, I wonder, if this is left in, that it could say something like "demonstrated by"
multiple measures such as but not limited to disaggregating the state level data," so that when people are submitting, you know -- when LEAs are submitting their justification for why they're going over the one percent and they're explaining the circumstances, that that can also be looked at for the waiver at the federal level.

MS. PODZIBA: Derrick?

MR. CHAU: I'm just trying to think of a happy medium here and offering up a solution, because you have definitely different sides to this issue. And I think it sounds like people are fine with -- members of the committee are fine with including a plan and timeline, and I definitely want to emphasize that this isn't going to happen in a year, and having that expectation, an equal expectation across all states and all districts is unfair, inherently unfair.

Speaking from the second largest district in the country, and asking us to do something like this where we will not
I like what Lara offered about multiple measures, and if we were to take a lot of this language from sections ii and iii and put that into section iv as sort of a consider as part of their plan and timeline, "consider data multiple measures if applicable or necessary" to address some of these issues.

I think it's unrealistic to expect these schools and LEAs to change, and I'm also thinking about these single-school LEA charter schools who are going to be asked to make some of these changes very quickly as well. So I'd just like to put that out there.

I think it's fair to ask for a plan and a timeline, for this, and I would ask for time, because all of us are very different. Some of our states are very, very large; some of our states are very, very small, and each district is going
1 to have to offer up some steps, and I think it's
2 fair to ask for those steps, and as long as -- I
3 would hope that as long as there is evidence that
4 we're moving forward in the plan for this that the
5 waiver would be granted moving forward.
6  
7 MS. PODZIBA: Derrick, could you
8 explain the exact proposal that you were making.
9  
10 MR. CHAU: So there are pieces around
11 disproportionality, around the students assessed,
12 the percentage of students assessed.
13  
14 MS. PODZIBA: So are you referring to
15 Paragraph A?
16  
17 MR. CHAU: A and B. I'm looking at
18 aspects around the next section that talks about
19 "not significantly increasing" or -- I mean, I'm
20 very concerned about that language there and that
21 word "not disproportionately assessed" -- I think
22 Tony broached those issues before =as well. That
23 seems very finite, very absolute, and I'm
24 concerned about setting an absolute equally across
25 all of those districts is unfair.
I'm wondering if we could -- somehow we could take those pieces, put that in the plan and ask for states to address those pieces if applicable or necessary as well. I think there's an assumption here -- I'm very concerned when in the regulations there's an assumption that things are working poorly, and they not might be, and it might be the case that a single school, single LEA charter school may be proportionate, but they're still above. And so, I just want to throw out that need for flexibility. MS. PODZIBA: So is the proposal -- I'm just trying to understand the proposal, that the timeline and plan, what's now paragraph romanette iv on Page 5, become the primary focus, and that these parts -- that the state would need to show how these requirements are integrated into its plan. MR. CHAU: Yes. MS. PODZIBA: In order to get the
waiver.

Ok, there are a lot of cards up.

Patrick?

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

need to spend a lot more time on this. I think

we've heard a lot of concerns. This may be

something that we could table until the lunch

break, and I could consult some colleagues and

kind of see what advice they might have for me,

honestly.

But there are a couple of things I

wanted to say that I think are worth saying before

that.

Section romanette ii is the piece where

we ask for data, and it's the only one where we

actually ask for a specific data about what is

happening in the state; romanette iii is

assurances from the district, and romanette iv is

just the plan and timeline.

I think from our perspective, the plan

and timeline feels very forward-looking and it

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could be many years while the state is trying to work with its districts to make sure they're providing the right support for IEP teams to identify the right assessment for students.

I think there's been a lot of data for state-represented plans and timelines and then reality happens and they don't quite hit them. Romanette ii is the piece where we actually get the data to look at what's happening with the state and we make the determination. I think it's hard for us to totally divorce actually looking at data and making sure that this is appropriate now to approve for the state without also -- you know, separate from the other pieces and just asking for a plan and timeline.

I have one question, Tony, for you, that I wanted to see whether is reasonable. I think there are some discussions we can talk about with my colleagues.

But to the point I'm looking backwards
for you guys, you're being held to prior actions that don't necessarily reflect what's happening in the current year. We struggled a little bit with romanette ii before the test window that the state would be able to submit that data to us. So we've asked for it ninety days ahead of time. It seemed like a reasonable time that the state could have accumulated that data and submitted it to the Department.

Could the states submit current-year data as part of that request? I'm not asking you to say whether that's a good idea or not. I'd like to have a little time to think about that.

You're welcome to say that if you want.

Would that be possible, even from a logistical standpoint, to submit, when you submit your data, when you submit just request to say,

Here is the percentage of kids who have taken alternate assessment, and Here it is broken down at the state level.

MR. EVERS: Maybe. I mean, it's not
going to read -- it's whether we could.

MR. ROONEY: Mm-hmm.

MR. EVERS: I mean, this year, our complete data was finally that data got back from the different contractors and vendors.

And so, I'm not sure how that fits in, certainly before lunch. I would think we would like to know who might be exceeding that ninety days out. I'm not exactly sure if we have the data to give you, or we don't want to give you that. So it's an unknown.

MS. PODZIBA: So I take your point about having lunch. I've got four comments. I'd like to get those comments in and then we'll break for lunch.

So Aaron, you're up.

MR. PAYMENT: Alright, so we have to be realistic in what states can do, and let's separate the issue of what can they do timely versus the need to be able to report this information.
So is it possible to set a transition plan or new publication plan with a date by which that can happen? Or, would it be preferable -- so like we do a lot of compacting with programs, and then we get to set the date based on what we know our concerns are and how long it will take and all of that. So maybe, when they submit their initial plan, they include the date by which they will comply with this information. It has to be reasonable, obviously. It can't be when the next laws pass. So maybe if we did that...

So those would be some alternatives that would be an implemented timeframe of maybe a year or two, a couple of years, and the alternative would be to compact, to have the states when they submit their initial response to the law, to include the timeline by which they would be able to comply.

MS. PODZIBA: Thank you.

Thomas.

MR. AHART: Yeah, just, I like
Derrick's approach. There seems to be a lot of overreach in most of the reg that's putting specific requirements on LEAs, that the regulations or the text actually doesn't support.

So looking at it in terms of a plan, a state plan, because the law really speaks to the state having a plan. And so, looking at it from that point, rather than a whole bunch of specific holiday requirements, and I think it could be more fruitful.

MS. PODZIBA: Liz?

MS. KING: Yeah, a couple of different things.

I would just say, fact that people have been dealing with this for years means greater urgency, not less. I mean, folks have been transitioning since 2002, or arguably since 1994. So they have had their time. I could get all kinds of quoting, all sorts of civil rights things about timeline and justice and denying, delaying and that type of thing.
I did have some questions. I'm not sure why this is sort of plain text, "multiple measures" language. I don't know what multiple measures of disproportionality would be. So I did want to flag that and ask for some clarification around that.

I think there is also some confusion about the school level versus the LE level versus the state level.

So in this context, we are only talking about the state exceeding, which means there can be considerable variance among and within LEAs about what's going on, and that that happens separately and is addressed separately.

So for example a single-school LEA that is a segregated school serving exclusively children with disabilities, that would be handled under the LEA part.

I think, and I will be told by my constituents if I'm out of line here, but I suspect that, giving a state the option of even
considering a prior year would be something you
would be something we need to come through with to
demonstrate which data they would prefer. I think
that would be ok.
And then the other sort of larger
question I wanted to ask, to better understand
sort of where everybody is coming from and how to
meet everybody's constraints is, in my own mind I
can only imagine examples of where
disproportionality on the basis of race, ethnicity
or family income would not be excusable and would
not be a worthy justification of a waiver.
And so I'm interested in hearing if
other folks have examples of things that they
think at the state level, where the
disproportionality would be consistent with the
requirement and the intent of the law and where
that disproportionality would make sense.
So it would be helpful to hear some of
that.

MS. PODZIBA: Aqueelha.
MS. JAMES: I'm just thinking about at the school level and the amount of work that the LEA team will have to do with certain time constraints and what that means for students needs not getting that because we're so bombarded with adult business versus student business, and I just wanted to put that in progress here.

MS. PODZIBA: Ok. We're going to break for lunch. This is clearly a place where we're going to need to get creative in order to bring everybody into a consensus on this. I think a lot of key points got raised, and I hope people can hold all of those in mind as you think about what to do.

One thing I do want to say, Thomas, and this gets to your point, so this could be very minimal. However the Department will decide how it's going to grant waivers. And so in some ways, this is an opportunity to help the Department determine how it's going to grant waivers in a way that fits better with the needs of the students.
that you're all here to assist.

So we'll break for lunch.

Patrick, did you have a comment before we break?

MR. ROONEY: No. One logistic point, for the negotiators, you have a room, if you'd like to go and take your food and go back to the room, it's 1W109. I think it's the room you were in yesterday.

MS. PODZIBA: Thank you. So let's be back at 1:30, 1:30.

(Whereupon a luncheon recess was taken at 12:35 p.m.)

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AFTERNOON SESSION

(Whereupon at 1:40 p.m. the Negotiated Rulemaking session resumed.)

MS. PODZIBA: Welcome back.

Patrick?

MR. ROONEY: Yes. Hi, everyone.

Welcome back. I hope everyone is recharged and refreshed after the lunch break and ready to dig back in, and hopefully we have some coffee to wake us up.

I would like to propose that the conversation this morning was very rich and we heard a lot of the comments. I know we didn't get through all of Issue Paper 4B, but I think we heard enough to hear the concerns that people have around the language that's there that the Department need to take back and think about what that means for proposal and how we might structure, or whether we structure slightly different that we can bring back for you guys to consider.
So in the interest of time, I do want
to make sure we have the chance to get through all
of the assessment issues before the end of the day
today.

The beginning of the day felt like it
was ok. Now I'm feeling I hope we can get through
all the assessment papers. I was hoping we could
move straight into Issue Paper 3 if that's ok. If
we have time we could try to circle back if people
raise additional questions in 4B. But just in the
interest of time we make sure we will raise
questions on all of the issues papers, we will
jump ahead to Issue Paper 3.

MS. PODZIBA: Ron?

MR. HAGER: Just as a placeholder m
nothing happened right now or today, but I thought
to might be helpful for the expert, Marcus, to
talk about what does exactly disproportionality
mean, how does it apply in the context of the
alternate achievement assessment.

There seems to be we have a lot of
confusion there, so it is may help us to understand the issue. But I wanted to kind of have a placeholder there that it might be a good idea to have that suggestion. I just wanted to put that out there.

MS. PODZIBA: The Department wants to take a look at this and have some internal discussions. If we have time at the end of the day, then well go back into it.

MR. ROONEY: I certainly appreciate we did not get through all of it, and I know there were questions people had raised on sections of it. I think we heard a question in the discussion which makes us think think that we may need to reframe some aspects of it, and that may be more fruitful to wait until then, if that's what that looks like, if that is amenable to everyone.

MS. JACKSON: Just curious, whether we will be deciding or discussing if we are going to come back for the further session. I know that right now I'm probably jumping the gun, but
thinking about timing and I'm just curious about when we will --

MS. PODZIBA: So I think the thought was we would get through all the issue papers once, so probably tomorrow afternoon.

MR. ROONEY: Ok. So turning now to Issue Paper 3, this is the Locally Selected Nationally-Recognized High School Assessment Status. It's the new aspect of the ESSA that did not exist prior to NCLB.

Just as a refresher to remind everyone, absent this permission, the requirements were that states develop state assessments in reading language arts and mathematics that includes and integrates grades three through eight and then once in high school, and that the state administers the same assessment to all students in those grades, notwithstanding the one percent of kids who are taking the alternate assessment. So this new part of the law would permit states to permit districts to give a nationally-recognized
high school assessment.

We spent a bit of time discussing what

needs to be a nationally recognized assessment,

but there wasn't a proposal for how to define

that. But I think we heard some language about

what those might be, and I think we tried to take

a pass at defining it, because we think it would

be helpful to the field to know what constitutes a

nationally-recognized high school assessment. So

actually I'd like to work backwards slightly on

this on the reg text because I think that would

help set up the rest of the text.

So if you would turn to Page 4 of the

issue paper, the very bottom, D, is where we

suggest for this group's consideration and

discussion a definition of nationally-recognized

high school assessment.

And a further reminder from the last

session, one of the things that was laid out in

the report language from the Congressional

committee that passed the ESSA that accompanies
the bill was they specifically referenced ACT and
SAT. And so I think that was probably in our mind
to try to cover this definition.

So it's an assessment that's
administered in multiple states and used by
institutions of higher education in those states
for either the purpose of entrance or placement
for post-secondary education and training programs
or courses of study, to try to create an
expectation of this would be an assessment that
both is administered in multiple states and then
actually has been used by the universities or
secondary training programs for placement or
entrance requirements.

So now, going back to the proposal, I
wanted to -- we can stop and take some discussion
on the topic.

MR. EVERS: Just a question. I just
have to understand, at the bottom of Page 4 and
five, is that where this definition is that you
were just referencing?
MR. ROONEY: Sorry, yes.

MR. EVERS: It just seems oddly put. I have "and used by institutions of higher education in those states for the purpose of entrance in post-secondary institutions or course of study or for placement through courses of post-secondary education programs or courses in study".

I mean, does that make sense to everybody?

MR. ROONEY: Let's look at it, because we repeat the phrases that it's either -- the two pieces are they're either used for entrance or they're used for placement, and then we repeat it. There's probably an easier way to phrase this.

MR. EVERS: That's fine.

MR. ROONEY: That's what we were trying to do, trying to think about ways to structure the wording and make it a little less onerous.

MS. PODZIBA: Lara?

MS. EVANGELISTA: Yeah, I guess, I know you said it was referencing the statute, but I
have a lot of questions about, you know, specifically putting this in the regulation that it needs to be the test for the purpose of entrance or placement, since most of those tests don't have accommodations for ELLs. These assessments are supposed to be measuring the standards, but the assessments like the SAT and the ACT weren't exactly designed with that in mind.

So to put it specifically here I think really limits the kind of assessments that we're here to look at.

MS. PODZIBA: Derrick?

MR. CHAU: I would agree, I think the addition of the piece around "institutions of higher education" may be problematic, since we don't have any control over that and they tend to change their minds about that without consulting the school districts.

So I wonder if we might change that language somehow to maybe be more around "for the
purposes of demonstrating competency and mastery under state and/or national standards," something along those lines, "and/or for admission into those post-secondary education training programs," something disconnecting it from -- I wouldn't want the test to be whether or not institutions of higher education are using this. I think that's adding and then it would limit the assessments that would be available as options.

    MS. PODZIBA: Ron?

    MR. HAGER: We actually concur. Go figure.

    But I thought in terms of the definition of "national assessment," I thought we could add in, so everything at the top of Page 5, you've got "states" and then you've got the "and". Basically eliminate after the "and" but then "provides comparable data across states," which I think captures more of the idea of a nationally assessment. You have the "nationally administered" but also provide "comparable data".
That's what our suggestion would be, and not really formally connecting it to what happens with it. I mean, it can be used for this purpose, but we don't feel it should be limiting it to that purpose.

MS. PODZIBA: Alvin?

MR. WILBANKS: A little bit of argument on that. But I thought it would be good to ask Patrick if the Department is aware of the three states that were approved for this, Connecticut and New Hampshire and Maine, and I think two other states that used other than their assessment. Are you all aware of the cap for them?

MR. ROONEY: So I'm happy to answer that, and it's a good question. It's a little tangential, so to clarify, this is about permission for districts to use an assessment other than the state's assessment.

So this would be, you know, Wisconsin has test A and that's the test they give to all high school students, and Madison, Wisconsin asked
to use the SAT instead of the test A, and this would be for then that one district that was approved, and in that case take a look at the criteria. Then they would give that test while everyone else in the state is still taking test A.

Your question is about states that have picked the SAT or ACT as the statewide test that they give to all kids? That is totally allowable under the law right now that states can select whatever assessments they think are appropriate for their students and then make sure that they assess all their kids on that same test. That is then subject to the peer review requirements that they make sure that the test is aligned with the state standards, that it's a high-quality test that has technical rigor, according to the National Professional Testing Standards, and the Department uses external peers to help evaluate the quality of the test to determine whether it meets the requirements laid out in these regulations.
So, it's a slightly different thing for a state that says, Our high school test is the SAT versus this requirement, which is permitting -- the state permitting some districts to take a test other than the test everyone else is taking.

I do want to kind of add one caveat to some of the comments that we've heard, but I think it's an important distinction for us, is that the nationally-recognized high school assessment, that if the description you were giving is just a test given in multiple states as a national assessment, but I think there's something like a recognition that is why we thought it made sense to talk about placement or entrance in the post-secondary, that this is a test that is not only a testing being given in multiple states, but is being used for particular purposes to make sure students have attained an expected level of student achievement that would be slightly different than just a testing given in multiple states; which is why we tried to impose this definition and then tie it to
higher education, entrance score, placement or courses of study, training programs.

MS. PODZIBA: So in terms of the proposal that's on there, Patrick, is "multiple states" -- would you replace that with "is used nationally"?

MR. ROONEY: No, sorry. I would keep "multiple states". I don't think I heard anyone else changing that.

I think "nationally" then makes it sound like everyone has to take that test. So I think multiple states is ok.

I think I'm reacting to the idea of replacing or eliminating the entrance or placement in higher education or training programs.

MS. PODZIBA: Ok, so you don't want to delete that, which is the proposal on the table?

MR. ROONEY: Correct.

MS. PODZIBA: Delia?

MS. POMPA: The placement of a definition at the end makes me ask whether B
the top of Page 3 applies to it, under "state approval," and whether it does or doesn't, I would like it to be linked in and mentioned in the definition.

I think that would take care of some of the issues and concerns I would have about it focusing on higher ed and not on what happens in high school and the standards.

MS. RIGLING: Just to the point, I think it doesn't matter where the definition is placed. I think once we have a definition it applies any time the words "nationally-recognized high school assessment" are used. So it shouldn't matter once we have the definition.

MS. POMPA: Ok, then I would just recommend then that there be emphasis in the definition that the requirements under B apply.

MR. ROONEY: So I think I hear your point, Delia. To the way this regulation I think would read, a state may approve a district to use a nationally-recognized assessment that meets this
definition provided it meets all the other aspects of the full component in this issue paper, which would include A, B and C, and that would be how the state -- the state would have to make sure that whatever nationally-recognized assessment it's picking, it meets all aspects of the regulation.

MS. PODZIBA: Ok, so I'd like to go back to the definitions, see if we might be able to get closure on that.

Patrick said the Department wants to sustain the -- I'm sorry, it's really hard for me to read behind me, sustain the part about "post-secondary education".

Patrick, what about the addition of "for purposes of demonstrating mastery and provides comparable data across"...

I think, Ron, that was your proposal and we missed a word on that.

MR. HAGER: No.

MS. RICKER: It was Derrick.
MR. CHAU: "For purposes of demonstrating competency and mastering state and or national standards".

I was happy with keeping the remainder of that, "that does present admissions into post-secondary education, training programs or courses of study". And the remainder kind of leaves it open.

MR. ROONEY: Sorry, can you repeat what you would delete.

MR. CHAU: So I say deleting just the "used by an institution for higher education in those states".

I'm fine with the rest of that. I think the rest of it is fine, because it leaves it open to allowing for states -- a district to choose something that may not be used by an institution of higher education but it might be for a training program, it might be for other places, as well.

MS. PODZIBA: Lara?
MS. EVANGELISTA: Yeah, I guess I just want to keep it open enough. I mean, you also have exams like the IB or the AP. Where does that fall in? You know, like that's not necessarily used for the purposes of entrance into -- I mean, it's a factor that's admitted.

And then I feel like also, are we limiting, you know, different kinds of assessments that may come down the pike later on. You know you have states that are fully competency-based states now that are trying to develop assessments around that performance parameters.

I just feel like with keeping just with the placement piece is a problem. We have "and/or," "still be included," then I'd be fine with it.

MS. PODZIBA: Patrick, do you want to comment on that? I don't know if your sense is if this is meant to be very narrow or if it can be broad.

MR. ROONEY: So my sense of it is it's
a little narrow. I would say that I think IB and AP can meet this definition since you do get college credit if you score at a certain level on either of those tests that would encompass placement.

It's not an entrance requirement, but higher ed needs placement as well. I think those tests would meet this definition as we proposed it.

I do think we have a -- notwithstanding the rest of those, and I'm still trying to get my head around it, there are no national standards, so we need to make sure we leave that part of it, so we don't want to indicate that there are national standards.

MS. PODZIBA: Kerri.

MS. BRIGGS: I was going to highlight the awareness of national standards, and also the comparable data across states makes me kind of weary for the same reasons we just struck out national standards. I don't know that that's a
necessary inclusion. It could be used in several states means the data can be compared across states, but I don't think that's something --

MS. PODZIBA: So you're proposing a friendly amendment to strike.

MS. BRIGGS: I mean, now we're quickly getting into a place where there's lots of examples once you get into the purpose of demonstrating mastery of standards or fees for entrance into higher ed or placement in higher ed, like --

MS. PODZIBA: So, give me a specific proposal that will help us.

MS. BRIGGS: Well, "strictly provides comparable" --

MS. PODZIBA: Is that acceptable to Derrick? I know that was your proposal.

Kerri's -- that was yours?

MS. BRIGGS: That was mine.

MS. PODZIBA: Sorry, still waking up after lunch.
MR. HAGER: We always like data, so I was going to put that out there for now. That was mine.

MS. PODZIBA: So I'd like to try and close on this. It's not like do we like it. Do we need it. Do you absolutely need that in this definition?

Janel?

MS. GEORGE: I think that we do, and recognizing a point, I do think it's important that we don't have national standards, but how do we have an apples to apples comparison? We need to ensure that students are meeting a standard.

And I get that it's not the same thing.

It's different for every state, but how is the data -- it's important to have data that's comparable so we're able to recognize inequities and gaps. I think that's significant.

MS. PODZIBA: Aaron?

MR. PAYMENT: So this language doesn't require states to do it. It facilitates states to
do it, and they can do it. And with the high school dropout issue, states have adopted the governor's statistic for what statistic to use for high school graduation. So I think it's acceptable.

I don't think anybody should be afraid of the language of setting some national standard of requirement. I think states will see the value of it, and they will cooperate fully together, just like they did with the graduation.

MS. PODZIBA: Mary Cathryn?

MS. RICKER: Yeah, thank you.

I have a question about the potential of either pulling out or leaving in the phrase "used by institutions of higher education in those states".

My question is, if it stays, does that mean that the over eight hundred higher education institutions in the country right now that are either test optional or refuse to accept standardized test scores in their entrance.

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procedures, that that would open up for us to have
some sort of performance opportunity as well.

MS. PODZIBA: Patrick?

MR. ROONEY: I'm not sure I'm
following. What do you mean by performance
opportunity?

MS. RICKER: So if an institution of
higher education either has an entrance procedure
that either refuses to recognize standardized test
scores, or just says, You can submit them or not,
we don't use them; but here is our entrance
criteria, right? Here's what we use; we are a
higher education institution that uses these for
the purposes of entrance into our post-secondary
education or training program, and that is across
states that there is a similar like a common
application, that then a local LEA could choose
the performance measures used there instead of a
standardized test.

MR. ROONEY: So this is about an
assessment system. So this is an assessment in

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place of the state's high school assessment. If higher education is not including an assessment, I think it wouldn't meet the definition of a nationally-recognized high school academic assessment. I'm struggling to understand what the question is.

I think the intent is to be, if there is a test that an institution of higher education or multiple institutions would have to be across multiple states, is using for either entrance or placement, then that test would fit this definition to be an option for states to consider.

MS. RICKER: So are you defining "assessment" as only a standardized test in this section?

MR. ROONEY: I guess I'm struggling with -- what do you mean by a "standardized test"?

I don't think we have defined that term.

MS. RICKER: There are performance assessments used both in high school and as an application for higher education that are used
that are not, you know, multiple choice, that are
not a standardized test.

MR. ROONEY: So I guess maybe it's the
definition of standardized test that's throwing me
off.

Right now many states have, as part of
their assessment system, components that are not a
multiple choice test. There is no requirement
that the assessments have any multiple choice
questions on it. It's up to states to determine
how they want to design their assessments.

If they wanted to -- so long as they
make sure the test is valid and reliable and fair
for all students and they demonstrate that
particular view, then I think that would meet the
requirements that's laid out in the regulations
we're proposing and the peer review criteria.

So I think the definition of
standardized test that's hanging me up. It's more
about the assessment system in the state and how
that's defined by the state.
MS. RICKER: I think that's helpful.

Thanks.

MS. PODZIBA: Thomas.

MR. AHART: I would like to suggest that we refer to what Derrick proposed and just strike reference to any "post-secondary program using using the assessment as part of their entrance requirements or placement requirements".

MS. PODZIBA: I think that was a proposal and the Department said that it needed to -- it would oppose striking that, if I understood them correctly.

MR. AHART: Could you just explain that rationale a little bit more for me? I'm slowing you up, but...

MR. ROONEY: I think our rationale with this definition around nationally-recognized high school assessment is it's more than just an assessment given in multiple states, but it's an assessment that has some additional value or benefit to the student for why it could then be
used in place of the state's high school assessment. Just as a test given in multiple states doesn't meet that bar, and so for that reason we proposed adding "entrance or placement in the post-secondary or training programs".

MR. AHART: What if you could demonstrate that your alternative assessment was more rigorous, more cognitively complex and more meaningful to our students than the current state assessment?

It seems like there's an assumption that there's a good state test in place now, which is clearly not the case in some areas, and you know we have some tests in mind that we'd like to pursue that won't meet this definition but that would serve our students in the school systems much better.

MR. ROONEY: So that may be a good pin to hold and I'd like to come back to that question, because I think Lara had a similar question.
When we go through the criteria that are laid out actually in the ESSA and that are then repeated in the regulations, the requirement is that whatever nationally-recognized assessment that the state approves for districts to use has to meet particular criteria, including providing comparable data and being equivalent in content coverage, and it has to actually provide the same information. So I think that would be -- your definition there would run directly at odds with the definition in the statute of how the state demonstrates that the locally-selected nationally-recognized test is permissible for them to use.

It should not be more cognitively complex. It should have the same content coverage. It should have the same difficulty. It should have the same cognitive complexity. It should have the same comparable level of student achievement.

That's what the statute says, so I
think that is a challenge with what's in the
statute that we're trying to regulate on.

MR. AHART: It's possible that it's
really not an issue. Are you implying that they
have to be identical?

MR. ROONEY: I don't know if they have
to be identical. They have to be equivalent,
which is the word in the statute, in terms of
content coverage, difficulty and comparable data,
aligned to the standards.

MS. PODZIBA: So I know that you
weren't intending to do all the discussion of
definitions, so what's the most use -- should we
go through the rest of the issue paper, or should
we work the definition before we do that?

MR. ROONEY: I think we should move on.

I would say, I think I'd agree with Kerri's
suggestion that "provides comparable data across
states" will be a challenge to include in this
definition to the point I just made that the
assessment needs to be providing comparable data
to the state test in that state, and that would
then kind of be needless to whatever nationalized
test would provide comparable data as opposed to
being both things.
I think that is a little bit of a
challenge for this part of the regulations, back
to your point, Thomas, but I think as a result --
because earlier in the regulation, which I
appreciate we haven't gone through yet, we talk
about the nationally-recognized test having
provided comparable data to the state test that
then is confusing to say we provide comparable
state a across states.

MS. PODZIBA: So, if it's alright with
everyone, let's go through the rest of the issue
paper, and then we'll come back to the definition.

MR. ROONEY: Thank you. Now going back
to Page 2 in the beginning of the regulations, I
think to clarify in the beginning, we talked about
this is a state -- at the state's discretion to
permit an LEA to do this. So you have the reg
text under A, it's clear that the state has the impression that it's our understanding of reading the statute that that's actually what's intended when you read through the requirements that's in the ESSA. So we clarified that here in A. And then following from that, Number 2 in the bottom of Page 2, we wanted to clarify, and I think this was a point that Tony made in the last session, that if an LEA is going to select a nationally-recognized high school academic assessment, that it be the same nationally-recognized assessment that it provides to all of its students in its schools, in high school. So in that case, if an LEA selects to do this, it would then replace the existing state test and they give that nationally-recognized test to all of its high school students in the LEA, to Richard's point. So then going back under Page 3, under the State Approval Process, you'll see a lot of

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this is laid out in the statute that's in blue
text and it was in Issue Paper Number Six when we
first talked about it two weeks ago. But the
state has criteria it has to establish in order to
make sure the test is a valid and reliable test to
make sense to include as an option for districts.

So these are taken from the statute
that the state needs to ensure it's aligned to the
state's content standards and achievement
standards.

"Challenging state academic standards"
again refers to both the content and the
achievement standards.

"Addresses the breath and depth of
those standards, is equivalent to a more rigorous
statewide assessment," it's -- sorry.
Assessments -- "is equivalent in terms
of the coverage of the assessments, the
difficulty." We added in "cognitive complexity,"
which our intent there is to distinguish the
difficulty of the assessment and the complexity of
the assessment, which are two different aspects of how the content is being assessed on the test.

You could have very hard items that are just simple multiple choice items, and you could have very easy questions, very easy to answer questions that are arranged in more complex form in terms of the kinds of skill that they are asking for in the question. So performance tasks, for example, are more cognitively complex items, generally that can vary in difficulties. We wanted to have both the difficulty and the complexity of the assessment called out specifically under this criteria.

And then the quality the assessments, we added in the other aspects, and if there's something we forgot we want to give the district or state the discretion to add other parts they thought were appropriate.

And then in addition to the state review, the state has to ensure that the assessment meets all the requirements under our
regulation. So that's what the reference to 200.2 is. And in fact it does have the exception for these high school students who are not taking the same assessment as everyone else in the state. So that's the exception that is called out here.

And then, under v, that they provide reliable data, to make sure that they're comparable to student achievement consistent with the state's achievement standards, provide unbiased -- (inaudible) differentiation in schools. Again all of that comes from the statute in the blue text.

And then under Number 2, this is where we clarify that, you know, all this is another component that has to happen before the state can approve the assessment test. So the state uses its criteria to evaluate the test, and then they submit it to the Department for review, for our review as part of our peer review of what's in romanette ii.

We added in romanette i which is the
same language you have seen previously, that
making sure that the assessment does not provide a
benefit to one group of students that it doesn't
provide to another group of students because of an
accommodation that may result in, for instance, a
non-college reportable score for that student that
would be a concern with 806 of the Scoring Act and
IDEA and Section 504 of the Rehabilitation Act,
that we wanted to have that consistent language at
least elsewhere in 200.6 when we talked about
assessments for students with disabilities,
English learners.

And then if you go to C, on Page 4,
this is where we clarified a little bit around the
applications that a district has to provide when
it asks the state to administer the
locally-selected math and nationally-recognized
high school assessment, based on the state's test,
that before it does that, it tries to add some
protections for transparency and for parents of
the district, that it has to update its district
1 plan for its education system, and then it also
2 needs to notify parents that they need to attend
3 initiatives before they submit their request to
4 the state, to tell their parents that they intend
5 to request this, and provide parents and the
6 public an option to weigh in on that request and
7 then provide them information about what the
8 impact that may be on the instructional programs
9 in the school districts, and then annually, if
10 they continue doing that, they have to alert all
11 parents in their districts that are affected that
12 they're doing this in place of the state's high
13 school assessment.
14 And I will highlight here in number
15 five, on Page 4, and I think Rita tried to express
16 yesterday, but I promised that I'd come back to
17 it. So this is language that is new language
18 we're proposing around notices to parents under
19 this paragraph that they be in an understandable
20 and uniform format, they be written a language
21 that parents and guardians can understand, and if
that's not practicable that they have them orally translated to parents or guardians. And then upon a request by parent or guardian, write an alternative format, such as in Braille or large-print or type format.

I think our proposal would be that in other places of this regulation, if we can agree to the language here on number v, that we would then use that consistent language in other places where we talk about notice to parents, that they would parrot that language and make sure they copy that into other sections in the language. So we could spend some time on that.

Sorry, I think we realize it maybe better to put it in one place and then put it throughout instead of repeating, but we can talk about it here, the proposal of the language, and then we can take that back and figure out how best to incorporate it.

MS. PODZIBA: Ok, we've got a line already.
Richard.

MR. POHLMAN: So, I want to offer some technical -- mostly technical limits regarding how this plays with charter schools.

And we tried to do some work to incorporate the variety of elements of charter law, local charter law, and I really stress that I feel this is important for regulations and not Guidance because of references within ESSA that are different to local charter laws. So we think it's important to have that included here too.

So I have a series of proposals that I guess I'd like to put up there. The first is, under 200.3A, that it read -- I'm just going to read out what it should say. "A state, at the state's discretion, may permit an LEA, and," this is the part, "and a public charter school notwithstanding the status of an LEA to administer the nationally-recognized assessment".

And then in two, or I'm going to get to revise. After, or sort of midway -- after the
1 clause C there, adding a comma, it says "except
2 that students attending public charter schools
3 shall be assessed according to the terms of the
4 Charter School Performance Agreement and state
5 Charter School Law.
6 MS. PODZIBA: Say that again.
7 MR. POHLMAN: "Students attending public
8 charter schools shall be assessed according to the
9 terms of the Charter School Performance Agreement
10 and state Charter School Law".
11 And I think the intent behind this is
12 that charter schools in most jurisdictions have a
13 dual level of accountability, one that is to the
14 state's accountability system, but another that
15 exists through their charter agreement with their
16 authorizer. And then it's important that an
17 LEA -- a free-standing charter LEA may not be able
18 to sort of petition to the state to use something
19 that's out of compliance with their charter
20 agreement with the authorizer.
21 Does that make sense, Kay? So I didn't
1 do a good job of explaining it?
   And then iii under that section --
3 MS. PODZIBA: Do you want to -- let's
4 just hear from Kay before we get --
5 MR. POHLMAN: Sure.
6 MS. RIGLING: I was just wondering how
7 this would work. I mean, wouldn't the default
8 just be the state assessment then?
9 MR. POHLMAN: Yes, it would be. Then
10 the point is that the LEA would not necessarily
11 be -- the LEA must administer the same locally
12 selected assessment, so this would be an exception
13 to -- sorry, let me --
14 MS. PODZIBA: So a charter school in an
15 LEA would not then have to --
16 MR. POHLMAN: Yes. If that LEA
17 determined -- and had a charter school and that
18 LEA determined it's going to measure some impacts
19 not in compliance with the authorizer's agreement,
20 that that charter school would not actually
21 implement that alternate assessment. It would
1 implement what's in its charter agreement.
2 
3 MS. RIGLING: I guess where I'm
4 struggling with that statement is that, presumably
5 in the absence of this provision, the charter
6 school would be taking the state assessment.
7 So wouldn't its state charter agreement
8 always be consistent with the state assessment?
9 It may not allow for another assessment, but it
10 would at least allow for the state assessment,
11 right?
12 MR. POHLMAN: What you're saying is
13 correct, yes.
14 MS. PODZIBA: In which case, is this
15 necessary or not necessary?
16 MR. POHLMAN: It is not -- I think this
17 is. I think what this is saying, Kay, is that the
18 LEA must administer the same locally-selected
19 nationally-recognized assessment to all high
20 school students in that LEA.
21 If the LEA has a charter school in it,
22 within LEA there is a charter school, which is a
district charter, and they have multiple -- then you would -- then that locally-selected nationally-recognized high school assessment is not consistent with the authorizer's agreement, then that charter school would not then take that nationally locally-selected -- you got what I'm saying? Sorry.

MR. PAYMENT: I think I have a clarification.

MR. POHLMAN: Do you want me to read the third one and then --

MS. PODZIBA: Is that the sum total?

MR. POHLMAN: Yeah, under A. So I'm happy to wait and I'm --

MS. PODZIBA: Go ahead. I didn't know if you had --

MR. POHLMAN: It's a long sheet of paper.

Three, "Before an LEA requests approval from the state to use a locally-selected nationally-recognized high school assessment, the
LEA must provide an opportunity for meaningful input to all public charter schools whose students would be included in such assessments".

MS. BECKER: Is this totally new?
MR. POHLMAN: Yes, it is totally new.
MS. PODZIBA: I have a hunch there are a lot of different issues. I don't know if I want to spend a whole lot of time on this issue. Generally no one has a problem with it.

(Show of hands.)

MS. RICKER: I have a couple questions.
MS. PODZIBA: Shucks. Wow, we can't get traction anywhere.

Alright, Aaron.

MR. PAYMENT: I think what we are requesting, because, so we have a -- we have a state charter public school academy. We're also a VIP. Our regulations come down from our charter institution, university, and often what happens is -- and this is what I think is going to play out in a second -- is the disputes over whether or
not charter schools or public schools and whether
or not they follow state regulations, and I can
see the concern about defaulting to the LEA when
the charter is really independent of that.

It fully falls under the state, but it
doesn't necessarily fall under the local LEA. So
I think it makes sense.

And further we also fall under the
tribal jurisdiction. So we have all of these that
we have to comply with. So I can see, often the
local LEA, the local district is at odds with
charters, because we're taking kids away from
their schools. So, I would support having a
separate carveout for charters. It's got to be
consistent with the state anyway, but it shouldn't
be beholden to the local LEA.

MS. PODZIBA: Tony?

MR. EVERSD: This would conflict with
Wisconsin state law and I'm guessing some other
state laws.

MS. JACKSON: Could you explain that,
Tony.

MR. EVERS: In Wisconsin, all public schools, public charter schools that are part of public school districts, independent charter schools and voucher schools are required to take the same state test. So this would conflict with Wisconsin law.

MS. GEORGE: And federal law.

MR. PAYMENT: I think I said that.

MR. EVERS: Yes, you did.

So that's a larger issue. I'm not sure how we want to make sure we report our accountability systems and have them keep comparable data, and this is going to take us down the road where it isn't comparable.

But that's a bigger issue. I'm just telling you it's against Wisconsin state law.

MR. POHLMAN: Can I just offer, Tony, do you think that would be covered by the fact that the general provisions of the state, the state's discretion would permit this?
The state, if it conflicts with state law, would of course not permit it?

MR. EVERS: Yes. Yes.

MS. PODZIBA: On this point? Lara, on this point?

MS. EVANGELISTA: Yes, it's on number ii.

MS. PODZIBA: Ok, I'm trying to see, does Richard's proposal work or does it not work?

Ok, so I'm getting a lot of nos.

We have so much to do and I'm feeling the time stress.

MS. GEORGE: So are we.

MS. PODZIBA: Good, I want us all to feel it.

If it doesn't work, we don't have to get all the comments about why it doesn't work.

Let's just move to the next issue, because I know that there are a lot of issues that people want to raise on this.
Is there a lot of concern? In other words, will this not fly with the committee.

MS. GEORGE: I just have a clarifying question.

MS. PODZIBA: Ok.

MS. GEORGE: My question is to Patrick and Kay. Is there another provision in that -- I can't remember off the top of my head -- related to charters and compliance with the provisions of ESSA? I thought there was a charter accountability provision?

MS. RIGLING: It's basically a provision that says that oversight for accountability will be governed by the state charter school law.

But charters are treated as public charter schools under ESSA and subject to the requirements of ESSA.

MS. GEORGE: Thank you.

MS. PODZIBA: So it sounds like enough of the people who understand this issue and...
1 proposal say that this won't work. So I'm going
to move us on to the next issue. Sorry, Richard.

Lara, you're up next.

MS. EVANGELISTA: Well, it's also on
number ii, and maybe I don't know if my proposal
will fly, but it might work.

So in New York City, we're considered
one district, and we have seventeen hundred
schools I believe, and so, this is -- you know,
and I think I mentioned this in our last
discussion which was very concerning, and we're
also a school choice. So kids travel from all
over New York City. I get kids from all over
Queens, but also from Brooklyn, the Bronx. And,
you know, the school that's a half a mile down the
road is a selected high school, and I guess I'm
just concerned if we're saying that everybody in
the district, and a district as large as ours with
very diverse schools, having them have to take the
same exact assessment, I would be concerned if
they took something like the SAT, which would be
fine for the school down the road, but not appropriate for my students. So I would propose to strike the whole thing.

MS. PODZIBA: Patrick?

MR. ROONEY: Sorry, strike -- so you're proposing to strike all of number ii and let the LEA be the same test district wide.

MS. EVANGELISTA: Or in something as large as a district like ours, I don't see how they could ever choose something that would be appropriate for all of our schools and our students.

MR. ROONEY: So I will say right now that's what happens, across all schools in the state, that all schools in the state give the same test. So this is actually -- I appreciate New York is larger than all other districts, but it would then be permitting a district to make a selection at the more micro level, micro
determined for New York City, then at the state
level and giving a limited discretion.

I think then our rationale for why it
would be included would be that, providing a level
of comparability across schools and the district
is important, and if you start to let schools
within the district each select their own
nationally-recognized assessment, you then have a
harder time saying, What does this mean about how
this school is doing versus this school down the
street? We just take a different test.

That would be a concern providing
information to the parents and the public that is
easily understandable and has a multitude of
assessments that is potentially being administered
within the district.

MS. PODZIBA: Lara, does that respond
to your concern or do you sustain that concern?

MS. EVANGELISTA: I don't know. I'm
just thinking about situations where maybe perhaps
certain schools would want to use something like
the IP or the AP for their schools, but other
schools wanting to choose something else.

You know, I'm just thinking of all the
difference scenarios, and again, being in a
situation where, you know, we have schools that
are serving very specific populations, and if the
district does choose something and it's not
appropriate, I don't know, I have just some
concerns about that.

MS. PODZIBA: But could you imagine New
York City choosing something like this?

MS. EVANGELISTA: I don't know. I
mean, I'm thinking on my school level. So,
nothing comes to mind, but I also know that
certain schools would probably want to use the AP
or the IB exam, rather than take all the state
assessments and take the AP and IB exams and the
SATs for their students, all the time we're
administering all these tests, it's taking away
from instruction for the students.

MS. PODZIBA: Ok. Derrick.
MR. CHAU: Actually my thoughts were pretty similar to Lara's, except I didn't think to strike the whole piece.

My proposal was really around the practicality of implementing something like this on a large district scale. So Miami is just behind New York in terms of size, and so we've had a rather checkered history on proposing things.

So I would like to propose having it be a binary idea in section ii where its either/or, or it's everybody, everybody is sort of an extreme step, I would actually propose that the LEA must include a plan and timeline for ensuring that the same locally-selected nationally-recognized academic assessment is administered to all high school student, so that gives an implementation plan around this. Rather than a wholesale, we're going to do it all, or we're not going to do it all.

When you think about how these things are implemented in districts, you have to think...
about how you're going to implement it, and

instead of all things for one, you have to think

about each district.

Our district, like New York and LA,

that's a lot of schools, and to ask us to do that

all at once would not be fair and it would limit

the implementation of such assessments at a

district wide level.

MS. PODZIBA: Thoughts about Derrick's proposal?

Lara, does that help you?

MS. EVANGELISTA: Yes, that would work for me.

MS. PODZIBA: Rita, do you have a response to that?

MS. AHRENS: I have a question on this, Derrick, because when a state changes its assessments or updates it or switches -- you know, everybody takes tests at the same time, or they wait until all the schools are ready, and so I think as a parent I'd be concerned if I see that
school down the road taking the AP test and my school is not in it, and we're on a further timeline, I think I would just be quite upset that my child is not taking the same test as some other school in the district.

I see this has a possible equity issue and that it might be causing more harm to allow schools to decide which ones get upgraded first to the new assessments.

MS. PODZIBA: Patrick, do you have a thought about this? I mean, what we're hearing is from very large districts that there's some concern about this.

MR. ROONEY: So I have two comments for this, and I do think I need to talk to others in the committee, the rest of the committee to see if it feels comfortable going forward with this language.

One, right now, when states develop new assessments, they roll them out across the whole state all at once. So I appreciate again LA and
New York being very large districts that have more
schools than some states, right now, when
California has a new assessment, it rolls it out
across all schools across the whole state all at
once.

So this doesn't seem -- by pilot there
wouldn't be a -- you could pilot it before you
came in and actually asked for it for your state
as part of this. But when they actually
administer the test the first time, they do it for
all schools.

So I don't know that it's an entirely
unreasonable expectation that if the state were to
do this or the district were to do this, that they
would do it all at once. That is the current
practice in states that are having assessments.

And the second is I think we do share
Rita's concern that if pockets of schools within
the district select IB, and others select
something else, that's a challenge as to what's
being offered to some kids and not others based on
what school they attend.

MS. PODZIBA: I'm noticing that there's other people who would oppose that proposal. So I think we're going to move to the next one.

Audrey?

MS. JACKSON: No --

MS. PODZIBA: Lisa.

MS. MACK: Mine is about number five.

MS. PODZIBA: Number five on where?

On Page 5.

MS. RICKER: Are we done with ii then?

We're not back from Lara's?

MR. POHLMAN: I'm sorry, could I raise a point of procedure?

I totally understand what you said around feeling time pressured, but I feel like that since coming back from lunch now there's been two proposals that have been put out on the table, mine included in which I don't hear large objections being noted on the record, but you as the facilitator pushing us through.
So I am sensitive to the time pressures, but I'm also sensitive to the fact that this is a recorded meeting. Our constituencies are held to some responsibility for not commenting after this. I as a charter rep don't have a voice to not consent to something.

So I feel like, if that's going to change, we need to just come to some consensus about the way you're going to move forward, because my proposal as well as Lara's I feel were really not considered.

MS. PODZIBA: So your proposals were put out and there were a number of people who said they couldn't live with it.

So the question for me as the facilitator is, if I see a lot of people saying No, I won't support that by shaking their heads, that gives me an efficient way of saying this proposal is not going to fly without taking the time for every person to articulate their reason for why they won't live with it.
MR. POHLMAN: The way the table is structured, I cannot see everyone's head. The only thing I heard on the record was Tony's objection, to which I responded, isn't there a safeguard, and he consented yes.

So again, additionally I proposed three different things that were not thought individually addressed, so I'm going to put that out there.

MR. PAYMENT: I want to point out, I support how you are managing the process, because if we are not going to get to an agreement, because we do this at the tribal council level and we'll haggle and haggle and haggle, and then we don't get anything done.

However I do think on that particular issue, I think we were probably really close to finding agreement, and unless -- I didn't see the numbers on dissent.

So on that one agreement, which, the way that we rephrased language and Tony was in
agreement with it, I think that maybe that one was a missed opportunity.

But I think principally the way you are doing it is if it looks like you're just going to end up arguing over things, sometimes its better to part things and get to the things that we can get done, otherwise it spoils the ability to get things done.

MS. PODZIBA: So if we agree to a third meeting, we still run the risk of not even having the chance to reach consensus just because time runs out.

So, part of what I would ask everyone, and Richard I know this is a priority for you, I can do two things: I can, for every proposal, ask if there would be dissent. And we could do that in a formal way so that everyone could see that there was either consent or dissent to their proposal. It's not my preference.

I'd like to understand where you felt the missed opportunity was, because I thought...
there was a lot of discussion that said that the charter school proposals weren't acceptable. Maybe I missed something on that.

But, I think what I need to do is ask people to try and identify priorities, and if someone says something, not have to repeat it. So, I'm just going to need help from everybody to move more quickly through this. And I'm also feeling concerned about what's a proposal, what isn't a proposal. When a proposal is very discreet, it's easier to manage, although part of what's a question for me is, what are the priorities of the group? Because if we spend a half an hour or forty-five minutes on every proposal, I don't have a way of knowing that we're getting to the most important proposals on behalf of the group.

So that's what I'm at a little bit of a loss for. It's a very large table. There's a lot of material to cover.

So I could use your assistance in
figuring out how to manage the discussion in a way
that gets -- and I think your point -- that gets a
fair opportunity, so that every proposal gets a
fair opportunity, but within the constraints of
the time that we have.

MR. POHLMAN: I think my biggest
objection -- first of all, this is the only
proposal that I had to bring to the table all day
on five issues. So I will hold back on the
comments.

However I think it is important for
dissent to be called for and noted on the record
in order for us to have the opportunity to go back
to that record should that be necessary, and it's
been necessary in other processes.

So I would just push at least for that
one.

MS. PODZIBA: Ok. Alvin?

MR. WILBANKS: I just let go perhaps as
we are making comments, try not to make them so
lengthy and talk about things that we all really
know. I've been reminded fifteen times about what
this does or what that does, and some of the
things some of us know. So I think brevity might
be one way of moving things along and then we
could talk about some substantive things.
And I don't mean that in line of
cutting people off. We just didn't have time.

MS. PODZIBA: So I want to, on
Richard's behalf go back to the charter proposals,
and Patrick and Kay, perhaps I misunderstood. I
thought you were saying that the Department --
that those didn't work legally.
Did I misunderstand that?

MS. RIGLING: I was just
questioning -- I don't dispute the fact that
charter schools within an LEA are in a unique
position, because they're under the LEA, and yet
they certainly have autonomy that other schools in
the LEA don't have, and that autonomy is granted
to them in their charter.

What I was just questioning is, the
1 phrase, "if inconsistent with the charter,"
2 because to me the charter would always have to
3 enable them to take the state assessment.
4 So it seemed like, rather than an
5 assessment that was acceptable to the charter,
6 maybe the answer would be the state assessment.
7 MS. PODZIBA: Patrick?
8 MR. ROONEY: I was going to say --
9 Richard is nodding his head. I think the proposal
10 then would be to change your language to that
11 assessment, is that "state assessment instead of
12 the assessment as determined by the authorizer".
13 MR. POHLMAN: And you would make that
14 modification in the A ii? Is that the one you're
15 talking about?
16 MR. ROONEY: I think so.
17 MR. POHLMAN: Yeah, I think that would
18 make sense.
19 MS. RIGLING: I mean, your charter
20 LEAs are going to have this same opportunity as
21 any other LEA, and it will probably be a lot

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1 easier for them.
2 MR. POHLMAN: Yeah, it's a weird
3 district within district to oftentimes have split
4 control, and they're very much at odds.
5 MS. PODZIBA: Were there people who had
6 concerns about this proposal?
7 Rita?
8 MS. AHRENS: I think my concern with
9 this is the comparability within the district. So
10 I'm thinking of places like New Orleans, which is
11 a hundred percent charter. So you could have some
12 of the charter schools using I guess the state
13 assessment and some using some other assessments.
14 I mean, it seems to me that it's already a mess in
15 terms of looking at data on otherpoints.
16 I really would like -- I don't think
17 it's within the Congressional intent to allow
18 charter schools to be exempt from this, otherwise
19 I would wonder why Congress didn't put it into
20 statute.
21 MR. POHLMAN: So your example can happen
already, because the charters in New Orleans are LEAs. So that happened. As long as Louisiana decides to list those as state group assessments, that situation can happen.

MS. PODZIBA: Aaron.

MR. PAYMENT: Alright, the reason I support this, the way I understand -- my tribe has a charter school. We are the LEA. So we don't have an LEA telling us what we can or can't do.

This is the default to the state. So the local LEA can propose something, but you go to the state.

So I think, maybe I have a lack of understanding of what charter schools are.

Charter schools are public schools. They're required to follow the law under the state as funneled through the chartering entity. They can't write regulations in the charter that conflict with the state law.

So my concern is that, in those circumstances where the LEA might conflict with
the state, which they shouldn't be able to, but if
that's the case then it defaults to the state
proposal. I'm supporting that the state controls.

MS. PODZIBA: Alright, were there any
other concerns with this proposal?

Liz?

MS. KING: Yeah, so I mean an LEA, I
disagree with the proposal. The state and the LEA
are both meaningful units under Title I, and so if
a charter's in an LEA, then it is a school in an
LEA. If it is it's own LEA, then it's it's own
LEA.

The language says "a state may permit
an LEA," so whether that -- however the state
configures it with a charter being part of an LEA
or its own LEA, then it needs to continue being
about the LEA. Because creating individual
exceptions for individual schools I think is not a
good idea. I think it's bad policy and I think
it's contrary to the very, very narrow exception
that the statewide assessment included here.
I also have a new proposal, so I can either say that now or I can wait.

MS. PODZIBA: Is it relative to the charter school issue?

MS. KING: No.

MS. PODZIBA: Ok, so let's wait on that.

Anything else about the charter school proposals?

Ron.

MR. HAGER: My understanding is that the ESSA trumps -- charter school provisions have to be consistent with the ESSA, so that you can't have a charter school that is free to have a different assessment. That's why I'm disagreeing with this proposal. If it's conflicting to me, it's conflicting with the ESSA provisions.

A charter school that is not its own LEA, but a charter school that's a member of an LEA, that the ESSA provisions that would apply to that LEA would apply to the charter school, which
is the statewide system of assessments, and this
is a limited exception to that provision, but
charter school is still a member of that LEA.

So that's why I'm not supporting this
suggestion.

MS. PODZIBA: Kerri, do you have a
comment on this?

MS. BRIGGS: I was going to say I think
we should offer some deference to charters that
are in the LEA to allow the integration to happen.

MS. PODZIBA: Aaron.

MR. PAYMENT: I still think that
somehow we're communicating in different
languages, because there is this presumption that
charter schools are not required to follow the
state regulations. They are. They're not
chartered outside of the state. They're chartered
to the state. So they're required to follow the
state regulations.

And so this sphere of concern that it
conflicts, it can't possibly conflict, because
they are chartered under the state law. And the institutions, and usually universities, will not receive their charter funding if they write a regulation that conflicts with the state.

So this is an unfounded concern because it's not based in any reality.

So, one final thing is, tribes have components. The state is often the component, but I will tell you that for equity purposes local is presumed -- where we we experienced the discrimination disadvantage is generally at the local level at the LEA level.

I gave you kind of the sanitized version of what I did to try to improve the local school system, but it was hard to get them to where we needed to get them.

But the state is less of the enemy than the local LEA in the circumstances for an American Indian population, I happen to be an advocate for other Indian populations.

So nothing is being advocated here that
is to allow the charter schools to have
assessments that are inconsistent with the state
regulations, and if you understand that and agree
with that, then you shouldn't disagree with the
proposal.

MR. POHLMAN: Can I offer just a
different proposal and that we struck the language
except for the consultation language I included in
iii, would people be amenable to that? Because I
think it could address not all of my concerns but
the majority of my concerns if we could come to
consensus around the inclusion of iii alone.

MS. PODZIBA: Ok. Would there be any
dissent to adopting this change?

MS. RICKER: Can I ask a question?

MS. PODZIBA: Yes. Mary Cathryn.

MS. RICKER: My question is, on the end
when you talk about "whose students would be
included in such assessments," and doesn't -- and
maybe I have two questions.

Are you explicitly referencing a
district that is acting as an authorizer, and so
therefore their decision affects those students?

Because my lingering question is an
independent -- so an LEA charter, right? So let's
do St. Paul is an example. There is a charter
school there. They're small enough that they
contract with St. Paul public schools for their
English language services and their exceptional
need services.

So suddenly I see a concern in that,
would those students then, because they're having
those services contracted and therefore those
teachers are trained to offer the assessment that
the district chose, theoretically if the district
could choose it, the charter school though chooses
something else, because they can, as their own
LEA, is that a situation that could occur?

MR. POHLMAN: Can I just say --

MS. RICKER: Yes.

MR. POHLMAN: That situation can occur
without any of my amendments. In iii, all you're
saying is that before an LEA, and you're right to say it's the LEA that has charter schools that they have -- not a charter LEA, but a district that is an LEA and authorizes charters before they make this decision to move to a different assessment in my school, that the LEA must provide opportunity for meaningful input, or meaningful consultation, if you will, to all public charter schools whose students would be included in such assessments.

So it's just that time in which that charter schools -- and in most, and I'm sure all of the districts here at the table do a great job with communicating with charter schools in the districts, but that does not happen everywhere in the country, and I'm simply trying to advocate for those schools who might be in a situation of really not even being communicated with prior to this assessment switching, other than an approved statewide concern.

MS. PODZIBA: Any concerns about this
1   proposal?
2   MR. HAGER: Personally it doesn't
3   matter whether you use "consultation" or or
4   "input". I would defer to you.
5   MS. PODZIBA: Marcus.
6   MR. CHEEKS: I think for consistency
7   purposes, maybe we should use the term "meaningful
8   consultation".
9   MS. PODZIBA: Ok. Thanks for bringing
10  us back and avoiding that missed opportunity.
11  MS. RICKER: Can we be explicit "as an
12  authorizer"?
13  MS. PODZIBA: No.
14  Ok, let's go back to Lara's proposal
15  which was to delete paragraph ii.
16  I'm going to just ask quickly, is there
17  dissent from deleting paragraph ii?
18  Yes? Ok, Derrick we already went
19  through your proposal, so I think we're ready
20  for --
21  MR. CHAU: There's been a consistent
response from others on the committee that somehow
having the same assessment for all students is
what we want. That is not the case right now, and
we have a whole assessment item here where eighth
graders are not taking the same assessments.

And so there is an inconsistency here
that I just want to point out. I know we're not
going to get agreement on getting rid of this, and
I appreciate the feedback that we have the
latitude to pilot something like this and
implement it the way we want to, but I just want
to point out that we are allowing different
assessments right now in our district and among
individual students, and by not allowing different
assessments for large districts especially we may
be limiting the district from trying anything,
which is actually a disadvantage to some students
at well, who are special needs students and/or
gifted students.

I just want to put that out there. I
totally recognize that I'm not going to get
traction on this, but I just wanted to comment on that.

MS. PODZIBA: Thanks.

Lara, did you want to last comment on this?

MS. EVANGELISTA: Yes, and also to Derrick's point as well, the assumption that because the assessment is different, you're not measuring the standards in the same way, and there are processes in place that review these assessments and peer review to make sure that they are measuring the standards.

So just because it's not the same exact assessment doesn't mean that we're lowering our standards or that we're not assessing the same standards.

MS. PODZIBA: Thanks.

New issue, Lisa.

MS. MACK: Ok, again I don't know if we're going sequentially, so I'm at the bottom of Page 4.
MS. PODZIBA: Take us where you want to go.

MS. MACK: Just a quick question, just a quick comment, as a parent, I'll very happy with number v.

MS. PODZIBA: Thank you. I appreciate the infusion of some positive thoughts.

Audrey?

MS. JACKSON: I wanted to propose, for 2(i) on Page 3, that this address that the LEA would ensure that accommodations are advocated for, secured and provided, that the families themselves would not have to go through the process to do that; so basically the LEA coordinating with the testing provider as opposed to the families having to do that.

I know it says "afford any benefit from such participation that is not equal to the benefit," perhaps to just note that whether accommodations are used or not is not noted in any way for others to --
MS. PODZIBA: What's the change? Do you have a proposal?

MS. JACKSON: Oh, the change? So the proposal would be -- so "ensure that the LEA secure the use of appropriate accommodations". I don't know if others -- you have suggested language, and "that the families not need to do it". I don't know if you need to say what doesn't need to happen. You don't need to say what you don't need to do, but what you do need to do.

And then with regard -- others can chime in if you have an opinion on clarifying this, but that would be the first part. The second is that, after the accommodations before the semicolon at the bottom, maybe, "including but not limited to having no" -- it's a lot of negatives, but like "no indicator whether accommodations were used or not on the reporting of scores".

I think that needs to be cleaned up a
little bit. Basically if the child had accommodations, others are not able to judge their score, with an asterisk, or whatever that they had accommodation.

MS. PODZIBA: Ok, discussion on that proposals? Are your cards up up for something else?

Liz?

MS. KING: Yes. I think it's great to report.

MS. PODZIBA: Thank you. Ron?

MR. HAGER: That covers a lot of things we had talked about in week one, and just in terms of language, I think that if you look at the way it was written, your first one would be an A maybe that if the district would secure the accommodations, and then when you got the "or" after any benefit that is not equal too, that could be a B and that would be where your language would play into.

I'm just trying to organize it. I
think what you are saying is trying to organize it.

MS. JACKSON: I'm totally open to more organizing language.

MS. PODZIBA: Right. So we could let the Department clean that up in its romanette language.

Kerri.

MS. BRIGGS: I like Audrey's additions, all of that. I'm just curious about the reporting about not flagging an accommodated test, but in fact it is an accommodated test and states are supposed to report on the number of kids that take accommodated tests, so how does that work?

MS. JACKSON: To clarify my intent, correct me if I am wrong, if it's an SAT or ACT or whatever, you're submitting it to colleges, in the child sharing of their score, that the individual school wouldn't pattern up on it, not the reporting to the state.

MS. BRIGGS: I thought that's what you
meant. I want to say that we have this thing how best to write it without it conflicting.

MR. ROONEY: It may be a question of the report that the state provides to the Department on the number of kids with an accommodation, versus the individual student report, which I think is what Audrey is trying to get at, and it may be a reference to 200.8, which is where we talk about reporting. That may help to clarify that.

MS. PODZIBA: Ryan, do you have a comment on this?

MR. RUELAS: Not on this, no.

MS. PODZIBA: Any other comments on Audrey's proposal?

MS. KING: I think a short other piece of this is that the individual student -- telling a parent that their child receives accommodations isn't the problem, right. If we are specifically talking about SATs and ACTs and these entrance exams that the institution of higher ed receiving...
the score report, and I don't know that that's
governed anywhere.

MS. JACKSON: Alright.

MS. KING: So I wonder if -- I think
there's a way to clean it up, but I think that's
the intent, right, that you're going for is that
that's the concern.

It's not that a parent in their
individual child's score report has been told that
their child receives accommodation, but that
somebody, a school, a college is told that child
receives accommodations, which could have a bias
and effect on the way that school interprets that
score.

MS. PODZIBA: Aaron, do you have a
comment on this item?

MR. PAYMENT: Not this one, no.

MS. PODZIBA: Is there any dissent from
adopter Audrey's proposal?

(No dissent.)

MS. PODZIBA: Ok, great.
Ron, new issue.

MR. HAGER: It's basically a corollary.

These provisions that you've got under B here, where the state requirements for the LEA that's seeking to use one of these assessments.

As you said in your preliminary remarks, Patrick, that the SEAs themselves are also using these types of assessments that we would want to have this criteria apply to both, both types of assessments, particularly Audrey's point, but all of them really in terms of the breadth and depth of the subject accountability and state and school district differentiation, all of those requirements.

And maybe they read into 200.2, but some of them are different enough that we want to at least lay them on the table that they should apply to any of these types of assessments.

MR. ROONEY: So I'll flag that. That is covered in 200.2, and when you look at 200.2 you see things that we have flagged for us that we
have to consider, suggestions from you.

    I think this piece here in B is looking at how the state is evaluating the
locally-selected, you know, the LEA application
for a nationally-recognized assessment,
partially in relation to whether it's aligned,
whether it's equivalent to the state test.

    So I think these are specific criteria
that the state would be applying with respect to
evaluating us, our locally-selected
nationally-recognized assessment, which it's why
it's good to have them here. You know, some of
them are repeated for the overall quality of the
assessment in part ii.

    MS. PODZIBA: So that's not a new
proposal. That's support.

    MS. JACKSON: I have a clarifying
question.

    MS. PODZIBA: Sure.

    MS. JACKSON: Does that include that
the test be able to distinguish performance levels
for the lowest performance -- like lowest subcategories? Is that the same guideline?

MR. ROONEY: That's not here either.

The test needs to make sure it has multiple achievement levels and then it needs to ensure that it's measuring the achievement of students against the standard that the state has selected. That's a general kind of practice.

I'm not sure if there's a specific question I missed, Audrey.

MS. JACKSON: I think Ron was talking about the other criteria for state-administered tests, that you were confirming that this would also have to follow that criteria. And I was just checking if what Ron is referencing, I believe, includes that the lowest performing kids -- that there is sub-differentiation in their performance, which is something that not all SAT ACT type things do. I'm asking if you would have that comparable.

MR. HAGER: Yeah, there are some unique
features to these nationally-selected assessments
that apply to local school districts selecting it
and would also supply at the state level.

So I think if we look at 200.2 to make
sure that these are covered, I think that's --
yeah. I get your point that not all of these
would be applicable to the state selecting it, but
I think some of them should be.

MR. ROONEY: Right, so I think these
are about, if you are comparing the
nationally-recognized test to the state test, the
criteria the states could follow.

I would also point out that in this
criteria these assessments have to go through the
same peer review as all other state tests, and
that's where you have to make sure that the test
is valid and reliable and fair for all students
and it's accessible to all students, and that is
spelled out in 200.2.


MR. PARKER: Just a question or point
of clarity on the cognitive complexity and the
definition and possible measurement of that. I
just want to ask to get a clarification on that.

MR. ROONEY: I did try to explain this.

I don't know if I did a great job so I'll try
again.

So the language above it in B talks
about the difficulty of the assessment, and I
think the difficulty of the assessment is just how
hard or easy the items are in the test, and the
cognitive complexity is then trying to get at kind
of the higher-order thinking skills there are
included on the test.

So you can imagine that you have a very
difficult test that's just multiple choice items.
That doesn't necessarily get to the complexity of
the standards and the higher-order thinking skills
that may be very difficult to measure in multiple
choice tests.

So we added that component in C for the
cognitive complexity to get at that other aspect
of assessments about the complexity of the tasks
that the student has to answer on the test.

So it's not just, is the test hard or
easy, it's about the kind of skills you're testing
on the test.

MS. PODZIBA: Does that help?
Ryan did you have a question on this
issue?

MR. RUELAS: No.

MS. PODZIBA: Delia.

MS. POMPA: This may be taking us back,
but it's been eating away at me.

When you explained why you didn't want
to take out "entrance into post-secondary," as I
understand your rationale it's to include in the
definition some sort of rigor.

Am I right about that?

MR. ROONEY: I think that's a fair
assessment.

MS. POMPA: And I wish, and I don't
have an answer for you, I wish we could find

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another way to define rigor.

I am concerned that "including entrance
into a post-secondary institute" sends a different
message. It may be over-interpreting what
Congressional intent is. And I'm surprised I'm
saying this.

But it does begin to shape for
districts which tests they pick. And really what
the language only says is "nationally-recognized
high school academic assessment". By adding this
language, it takes the "such as" of SAT and ACT
and makes it sound like it's what it's all about.
And it's not.

So how do we establish rigor without
talking about post-secondary entrance, when this
is really about high school academic assessment.

I'm afraid I don't have an answer. I'm
happy to think about it overnight. I just wanted
to put that on the table.

MR. ROONEY: We're open to suggestions
if people have them.
I think in particular we're focused on
the nationally-recognized high school assessment,
and that's not just a test given in multiple
states. That doesn't to me sound like
nationally-recognized. That's just nationally
administered. And I feel like those two terms are
different and distinct.
I will point out that we did try to
clarify that's not just entrance in the
post-secondary institutions. That's also training
programs and courses of study, which tries to take
into account that there will be some students that
are not even going to college, and for that reason
they may want to take a different action. And for
that reason they should be able to take a
different course of action. I appreciate that.
We have a very narrow definition.
MS. PODZIBA: So Delia raised an issue,
didn't offer a proposal.
MS. POMPA: No, I didn't.
MS. PODZIBA: That's ok.
I just want to know if people have a proposal or people want to--

Rita?

MS. AHRENS: I just want a definition of the current definition as proposed, because I think it may exclude tests like the TIMS and APIZO (phon) which I think ought to be nationally-recognized.

So maybe we could include "internationally benchmarked tests," and I don't know nationally benchmarked, because we don't really have a national benchmark, but some sort of norm to introduce that rigor aspect.

But I do propose that we add internationally benchmarked tests.

MS. PODZIBA: Ryan, is there a comment on this question?

MR. RUELAS: No.

MS. PODZIBA: Aaron, on this question?

MR. PAYMENT: Yeah, so what I was going to say earlier, and I think that this applies, the
woman that was here, the doctor that was here on
the first day that went through data, we're using
a lot of terms and I think that we need to
understand what "nationally-recognized" means. I
don't know why they use that term. It probably
should have been "national norm."

So there are some specific things with
assessment and other populations, segregation, all
of those things that -- we probably need a very
brief primer because I think that might help us to
understand what appropriate language to use.

MS. PODZIBA: So is your suggestion
that we table Rita's proposal for you now until we
can get better information or better
wording?

MR. PAYMENT: Yeah, not only her
proposal, but other references to
nationally-recognized and -- when we talked about
that. Because I'd like to know what the intent
behind it was, what the Congressional compromise
was, so that we're doing it consistently.
MS. PODZIBA: So generally the definition?

MR. PAYMENT: Yes.

MS. PODZIBA: And Rita, is that ok if we move off on that one?

MS. AHRENS: Yes.

MR. ROONEY: I'm finding an opportunity in this discussion. I think the reason we proposed it is because there is no definition. I don't know that we'll find a definition for nationally-recognized high school assessment. I think that "nationally norm" and "nationally-recognized" are consistent.

I'm happy to put this on the table and move to another issue.

MS. RIGLING: And "nationally-recognized" is statutory. We didn't make that up.

MS. PODZIBA: So you're just trying to define it?

MR. PAYMENT: I agree we need to be
informed on that so it's consistent.

MS. PODZIBA: So we're going to table that for now.

Kerri, new issue?

MS. BRIGGS: On Page 2, number ii, where the reference to "administering the same national," blah blah blah, "to all high school students," I didn't check this, our references, bit I'm assuming that you don't actually need to test every child who might take ninth through twelfth, I mean the school district.

The intention is that if Texas is testing at ninth grade, and Houston is testing at tenth -- is that what this means? Houston would have to assess in nine to twelve.

MR. ROONEY: Yes, kind of. If Texas had a tenth grade test, and Houston took the SAT, they would not take the SAT alternate rigors. They would have to give the SAT to all kids that were going to high school.

And whether that could be eleventh
grade, I don't know that -- I mean the state may
want to come up with different rationale for it,
but I don't know that the regulation or the
statute or what we proposed would say it has to be
given at the same grade as the state's test.

It would have to be given to all kids
in high school consistent with the requirement
that they test once in high school.

MS. BRIGGS: I have another question.

On Page 3, the red letter C, Cognitive Complexity,
because we're referencing these tests have to meet
everything in 200.2. I'm not sure if we insert a
particular requirement just on this test that also
wouldn't apply everywhere.

I don't really know what that means.

MR. ROONEY: We'll do it again.

MS. BRIGGS: I mean, I've heard your
explanations about them. But I just find that
that's not a necessary addition.

MS. PODZIBA: Is that a proposal?

MS. BRIGGS: Yes, that's a proposal.
MS. PODZIBA: Ok, there is a proposal
to strike C, "cognitive complexity of the
assessment" overall.

Discussion of that proposal.

Janel?

MS. GEORGE: I wonder if there is a
possible rewording could be -- I don't know if we
could say it there or if we can say it later, to
show comparable causeability levels. I don't know
if that would address the same thing where we're
measuring different ability levels.

MS. PODZIBA: Kerri.

MS. BRIGGS: I think when you're
considering how to measure a test would be
achievement levels. So the state has four
achievement levels. So all of that would be in
2002 point two, part of peer review. I don't
think it necessarily needs to be written in here.

MS. PODZIBA: So it sound like she's
not accepting your friendly amendment to the
proposal.
So other discussion on the proposal to delete C?

Thomas?

MR. AHART: Yeah, I would support that.

I think that what seems to me and what I thought the original intention of the statute to be is flexibility, and I feel like we're systematically removing all ability to exercise flexibility.

So I would agree that we should really follow the same guidance of 200.2.

MS. PODZIBA: Any dissent from deleting C?

Ok, it looks like it's out.

Ryan, new issue?

MR. RUELAS: So, it's interesting, because I was also kind of struggling like Delia about the whole issue of the definition. I thought to myself, ok, so are we only referring then to the ACT SAT, considering we're talking about the secondary, all those of higher --

post-secondary education and training programs,
etc. But then when it became clear that we're also talking about, you know, what certain states like, for example, California, we have SBAC, you know, and a reference to that, and it made me think about the parents and the whole parent aspect.

Is there anywhere throughout this whole issue for parents and notifying them of the opt-out possibility of the nationally-recognized assessment? Because I think that's a right that parents need to understand.

MS. PODZIBA: Someone have a comment about that?

MR. RUELAS: I just want to bring it up because of the fact that we're talking about the rights and looking through it, I don't know if it's present.

MS. PODZIBA: Is the opt-out general across all or does it need to be specifically in here?

I think your proposing that there needs
to be a specific mention of the opt-out in this?

MR. RUELAS: What I'm asking -- I'm asking is if anywhere throughout this entire thing is an issue in regards to the opt-out?

Because I'm thinking about this right now in regards to nationally-recognized assessment, about that's where I've seen it the most, you know, in regards to certain things about parents not understanding this, you know, that the they have the right to actually do that.

MS. PODZIBA: So when you say "this whole thing," I don't know if you're referring to this issue paper or more generally.

MR. RUELAS: This issue paper.

MS. PODZIBA: So Patrick, could you answer that question?

MR. ROONEY: I can try to answer it.

No, it's not in this issue paper and it's not in the package of regulations that we put forward for discussion.

The regulations that we have designed
and proposed for this discussion are really focused on what are the requirements for states as they design their assessment system and how they administer their assessment systems to all students.

There is a brief aspect of that in the statute, and if you look at the statute, it's on Page 32 if you want to go to that section of the statute, to the small paragraph (a), that says "Nothing in this paragraph shall be construed as preempting a state or local law regarding the decision of a parent to not have the parent's child in the state academic assessments under this paragraph".

That language is pretty clear, and it didn't seem to need to be expanded on, and it's not really about the design or administration of the assessment.

It's saying there is this affirmative right for parents, that it didn't seem -- if it didn't seem to be necessary in this issue paper,
it didn't seem to be necessary in 200.2 to 200.7
regulations that we’re focusing on now in
designing of the assessments. Because it's very
clear that it is a regular occurrence in the
statute.

That was part of that rationale.

MS. PODZIBA: So no proposal here.

MR. RUELAS: No, I just had a question.

MS. PODZIBA: So next issue, Ron.

MR. HAGER: Thank you, and I appreciate
the idea of having the same definition for this
parallel modus. So I just have a minor addition
to your language, and it has to do with the
electronic file. There's confusion about that.

I think if you said "accessible
electronic file" or "screen reader accessible
electronic file," what happens is a lot of times
you scan something, it's quote, unquote
electronic, but it's not accessible to someone
that uses a screen reader on the page. You have
to take another step to make it be accessible.

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So just that qualification for the definition of "electronic file" I believe will cover it.

MR. ROONEY: You're looking at five, romanette iii?

MR. HAGER: Yeah, the last phrase there, yes, "electronic file," just adding that qualifier to an electronic file.

MS. RICKER: Say it one more time.

MR. HAGER: Well, either "accessible" or "screen-reader accessible". Probably "screen-reader accessible" would be more specific. I'm open to either one. But we just want to make that --

Do you have a preference for that.

MR. ROONEY: So one clarification that Kay has pointed out to me, if you look further, the line above that, this is being provided in an alternative format accessible to that parent. So by definition the format needs to be accessible for that parent. So if the electronic file is not
accessible it wouldn't meet this requirement.
We've worked that one out too.

MR. HAGER: It is and I'll tell you why. Guess who one of the biggest sinners is on this point? OCR, when they send sent out their decisions, they fax them, and they're not accessible.

So we really want this "accessible to electronic formatting" -- it is overkill but it's such a problem so often for people with screen readers that we really wanted to double dip on it I guess.

And you shouldn't need to say it twice but, it happens so often. All of the material that the Department posted on the website with the waivers, all of that was accessible to screen readers. So it happens over and over again. I guess my point is the normal structure.

MS. PODZIBA: This is all part of a list of "including but not limited to". So you're adding another example.
So the proposal is to add screen reader -- if you look at what she has, "electronic file that is screen reader accessible".

MR. HAGER: Right, either way.

MS. PODZIBA: Comments or questions about that proposal?

Tom on that proposal?

MS. HARPER: Could we add "to the extent practicable," as it's included elsewhere?

MS. PODZIBA: So that's in two. So where would you put that? So being ok, maybe let me finish with this proposal and then you're bringing up another proposal.

Is there any dissent from including the "phrase screen-reader accessible"?

MS. PODZIBA: Ok.

And then Tom, you're raising another issue. Where would you put "to the extent practicable"?

MR. AHART: In the same place as it is in romanette ii, "to the extent practicable to the
individual," et cetera, et cetera.

MS. PODZIBA: Is there a discussion of that proposal.

Kay?

MS. RIGLING: I think that the ADA actually requires this and I don't think we could add "to the extent practicable" there.

MR. AHART: Could we just defer to that?

MS. PODZIBA: So another proposal?

Tom, could you tell us your alternative proposal?

MR. AHART: I think this is included in the ADA. I guess I'd have to take a little bit of time and word Smith it tonight.

MS. PODZIBA: So maybe we can come back to that.

MR. AHART: Thank you.

MS. PODZIBA: Richard, new issue?

MR. POHLMAN: I would like to look at --

it's under the LEA applications in C. We would
like to add something in here that creates an affirmative: "Charter LEAs requesting the flexibility or to demonstrate that they have conferred or consulted with their charter authorizer prior to requesting the authority".

MS. PODZIBA: Do you have some language on that, where it would go?

MR. POHLMAN: So we would just insert a new romanette that says "if the LEA is a charter school, provide assurance that the use of the assessment is permitted under the terms of the contract or performance agreement between the charter school and charter school authorizer".

"If the LEA is a charter school, provide assurance that use of the assessment is permitted under the terms of the contract or performance agreement between the charter school and the charter school authorizer".

It's again just ensuring that a consultation occurs for another group of charter schools.
To Aaron's point, there are different functionalities in the way charter schools look at states, so this would be for an independent charter LEA creating the affirmative obligation for them to go to their authorizer and then simply have this obligation prior to the assessment.

MS. PODZIBA: Discussion of that proposal. Aaron?

MR. PAYMENT: So, do we need to modify it by referencing -- we know that it has to follow the state, ultimately the state, so we want to make that a modifier.

MR. POHLMAN: Can you say it again?

MR. PAYMENT: So it has to be consistent with the state. So to allay any concerns do we want to reference that?

Where is the language that you cited?

MR. POHLMAN: So it's under C. It's under the LEA Applications. So this is once the state has created the list of assessments from
which the nationally-recognized assessment is written, then an LEA may apply to the state to use those.

MR. PAYMENT: Right.

MR. POHLMAN: In the LEA application, what we're asking is the charter LEA is being conferred with, prior to making that request, that they confer with their authorizer. Or, in this language actually what is say is it's permitted the under the terms of the contract and performance agreement.

MR. PAYMENT: So what about "consistent with state law"?

MR. POHLMAN: I'm fine with the amendment because I don't think it really --

MR. PAYMENT: I'm good without it too.

MR. POHLMAN: I don't think it adds much.

MS. PODZIBA: Thomas?

MR. AHART: Under romanette ii --

MS. PODZIBA: Wait, is this on
Richard's proposal?

MR. AHART: No, I'm sorry.

MS. PODZIBA: Marcus?

MR. CHEEKS: My concern with this last proposal is consistency with the law. I think states have been asking for and given flexibility to determine and identify schools in the districts.

Charters were identified under state law. We're giving an impression and precedence I think by teasing out special segments of this nature as if they're different, and I want to ask the question of the Department, if that is something that could be interpreted by this proposal and the most recent proposal we did around charter schools as if they are independent of what the state may define as an LEA.

MR. ROONEY: I don't know that I can answer that. I think for this one, this is a charter that is its own LEA that I think, to Rich's suggestion, would just say, In that case,
that LEA needs to assure that its charter authorizer will let it do this before it can ask the state to do it. Is that right, Rich?

I think then you're treating this charter LEA like any other LEA that we just have this extra agreement in this paragraph C. And the the one before is it just about public consultation or consultation with the schools.

I don't know how to address that question, Marcus.

MR. POHLMAN: Marcus, do you have a specific concern that maybe we can specifically speak to?

MR. CHEEKS: My concern is still, the aspect that the charter school faculty, which is in my state, and probably most, codified by state law, so if it's in state law, I'm concerned about the rationale to add elements that would treat the charter school setting different than what we would at face value treat the regular LEA.

MR. POHLMAN: Can I respond to that?
Marcus, I think it's a great point, but I think that there are, you know, fifty-two different charter laws, and I think that each of them consider the role of the authorizer differently.

In some instances, right, the authorizer is who makes that determination to give that LEA status under state law. Then therefore the state office considers them an LEA, because there are dual levels of authority at play, and that the authorizers in the country are concerned that charter LEAs cannot scoot around their authority and go directly to the state to ask for a different assessment, and then once approved, come back to the charter authorizer and say, Look the state approved this assessment," but that is outside of what the charter authorizer's accountability claim and accountability measures are for that school. Does that make sense?

So this is just a protection for those authorizers to say, There's a duty on the LEA.
requesting to go to that authorizer and say -- or
to say, This is allowed under my charter
agreement.

And it shouldn't really interfere with
any stated state laws. This is merely an
assurance for the LEA requesting this assessment.

MS. PODZIBA: Kerri, is your comment on
this question?

MS. BRIGGS: Yes, but I think what I
prefer to do is just talk with Richard during the
break. I'm not concerned about that language.

MS. PODZIBA: Kay?

MS. RIGLING: I was just going to ask
two questions about clarification.

To Marcus' point, would it help to
rephrase to say "if a charter school is eligible
under state law," to make it clear it's state law
that governs whether the charter school is an LEA.

And then the phrase "is consistent with state
law," I'm wondering if that should be -- you could
take it out. "Or is consistent with state charter

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school law”.

MS. PODZIBA: Kerri, does that potentially respond to your concerns.

MS. BRIGGS: No.

MS. PODZIBA: So you want us to table this for now? Is that my understanding? Ok.

Mary Cathryn. New issue.

MS. RICKER: Alright, Page 4, so first my perfunctory question is that, somewhere the word "parents" is actually defined as anyone with guardianship. Ok, beautiful.

So then I got hung up with romanettei.

The phrase "uniform format" seems very monocultural to me, or the product would be sort of monocultural.

My suggestion -- although I will be honest, I am open to someone who thinks they can write this and help me get through that perception -- is that it would be "be in an understandable format that is accessible," or format with "S" in parents, "format accessible to
the family population in the LEA," because that
may mean that the format is not uniform.

So, I can talk to people over the
break, too, just to see --

MS. PODZIBA: I really was hoping we
could get through this before the next issue paper
before the break.

MS. RICKER: I can bring us back to
number ii which I strongly object to as well.

MS. RIGLING: I think this is used
frequently in the law when it is talking about
communications with parents. I'm a little
reluctant to change it.

MS. RICKER: Statute is a place where
you sometimes see deeply imbedded
institutionalized practices that are not open to
diverse populations.

MS. PODZIBA: Maybe it's time to take a
break. Ok, why don't we take a ten-minute break
and be back at 3:45.

(Recess taken.)

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MS. PODZIBA: We'll reconvene as soon as everyone's back in their seats.

MS. PODZIBA: I know that Richard and Kerri worked something through, so maybe we can go to that until Patrick gets here.

MR. POHLMAN: I'm going to propose it then.

MS. PODZIBA: Let's just give Judy a second so she can get that.

Ok.

MR. POHLMAN: So it should read, "if a charter school is an LEA under state law provide and assurance," I guess "and assurance, the school" -- "that the use of assessment is consistent with state charter school law and it has conferred" -- I'm sorry, "and it has consulted with the charter school law".

MS. RIGLING: Could I make one modification? I was just told that in Title IV of the Charter School Program, they used the term "authorized public chartering agency" instead of
charter school authorizer.

Do you think we could use that term?

MR. POHLMAN: I totally support the present amendment.

MS. RIGLING: So it would be "authorized public chartering agency".

MR. POHLMAN: I imagine we should like to make a similar change to my amendment earlier in A(3).

MS. PODZIBA: Alright, any questions about that proposal? I'm assuming you can sit in for Patrick on this one, Kay.

Ok, is there any dissent from accepting this proposal?

Ok. Great.

Mary Cathryn, I know we were looking at yours, but I think Patrick wanted to respond to that.

Thomas I think you had a proposal on the ADA piece of that, so maybe we can get that in play. Just remind us where that goes.
MR. AHART: Yeah, near the bottom of Page 4, 5, romanette ii and romanette iii.

Under romanette ii I would suggest it read "B, to the extent practicable written in the language the parents and guardians can understand". And on romanette iii -- or I guess semicolon.

And under romanette iii, "being upon request by a parent or guardian of the individual with a disability defined by the Americans with Disabilities Act provided in an alternative format".

MS. PODZIBA: So it's to delete the ends of both of those romanettes as currently written?

MR. AHART: Yes, yes.

MS. PODZIBA: So open the floor for discussion of that.

Rita?

MS. AHRENS: I think part of the issue here is providing linguistically and culturally...
appropriate information that may not always be written.

So I think the previous language was better for the purposes of limited English proficient parents and other cultures.

MS. PODZIBA: Are you referring to both or one?

MR. AHRENS: To ii. I would like to keep the "if not practicable to provide the translation for such parent or guardian or presented in a culturally linguistic manner".

MS. PODZIBA: Wait, are you adding something?

MS. AHRENS: Yes, I did add something.

MS. PODZIBA: Ok. First let's do Thomas' proposal, and then we will take a new proposal. It sounds like you would not support Thomas' proposal.

MS. AHRENS: Correct.

MS. PODZIBA: Other discussion.

Ron.
MR. HAGER: I think that that language, representative of native language parents, I think that's pretty consistent across a bunch of regulations. I think they didn't draw that from a hat. I think they had that common elsewhere, so I may have to defer to Kay and Patrick on that one. For the other one, you have to go a little further, if you want to eliminate the example. I think you have to at least go that far. So I would agree with part of Thomas' proposal, but not the whole thing.

MS. PODZIBA: So, I don't know, Rita, if you could live with taking out the examples on romanette iii?

MS. KING: Can I also comment?

MS. PODZIBA: Yes, of course you can. I just wanted to check in with Rita.

MS. AHRENS: I'll defer to the experts there.

MS. PODZIBA: Ok, Liz.
MS. KING: I just wanted to get some better clarity or not why we would take out the examples since it doesn't change the legal responsibility. I'm not sure what the objective is of taking out these examples. These are probably the most common examples of the types of ways that you would do this. So in ensuring that the existing legal responsibility is complied with, it seems like this is helpful. So, if you could just sort of clarify more why you want to take out the examples.

MR. AHART: I just don't want it to be duplicative of other laws that we already have to follow in this regard and for things that are in currently in litigation, creating a bunch of whole different rules at additional expense that will have to be modified later anyway.

MS. KING: I'm missing why specifically having the examples has an effect on any of those things.

So like the examples are in answer to
1 it -- so if someone reading this says, What does
2 it mean? And what does "alternative format"?
3 Mean, and then they say, Oh, it means things like
4 Braille, large print and electronic files.
5 MR. AHART: Yes, to me that smacks of
6 things that I would better fit under Guidance.
7 MS. PODZIBA: Lisa, did you want to
8 jump in on this?
9 MS. MACK: I was just going to suggest
10 that if we don't put the actual wording, put the
11 reference that Thomas might be talking to, because
12 I think that we have shown in this discussion
13 without context, some of us don't know what it's *
14 referring to.
15 MS. PODZIBA: Patrick?
16 MR. ROONEY: I put my card up actually
17 for Kay. So I'll let Kay talk.
18 MS. RIGLING: I was just going to
19 react to the changes of romanette ii about "orally
20 translated". I think that language is here based
21 on what the Department understands to be the
requirements under Title VI.

So I think it really is important to keep that language.

MS. PODZIBA: So is there dissent to the change to romanette ii?

MS. RIGLING: It's okay the way it is now.

MS. KING: Yeah, ok. If we're agreeing to that, it's okay.

MS. PODZIBA: So, the proposal was to remove it, so I just I want to be clear.

Is there dissent to remove that from under -- the proposal was to put a period after "understand" and to remove everything that follows.

Is there dissent on that proposal?

MS. POMPA: Yes.

MS. RICKER: Yes.

MS. PODZIBA: Thank you.

Moving to romanette iii, the current proposal I believe is to -- well, Thomas I think...
there was a friendly amendment that it had to go up to "parent or guardian" and a period after that.

Is there dissent to removing those examples?

MR. HAGER: I want to clarify my comment. After hearing from Thomas, I think it's better to keep those in. These are legal requirements. School districts, other people need to be aware of the examples.

So I'm going to --

MS. PODZIBA: So you're going to dissent?

MR. HAGER: Yeah, I'm going to dissent from my own amendment. Sorry.

MS. PODZIBA: Alright, thank you.

We had a proposal from Mary Cathryn that was -- can you help me, where was that?

MS. RICKER: Page 4, romanette i underneath --

MS. PODZIBA: "Uniform format".
MS. RICKER: Actually, in having the chance to talk with some parents and with parent advocates at the table afterwards, and understanding that the gist of it and the history that the phrase "uniform format" has in case law or impact, so the suggestion of moving the clause that I to being a new romanette ii, so "be in an understandable and uniform format" would stay romanette i, and then romanette ii would be "is accessible to the family populations in the LEA in multiple formats," getting to the idea that there may be, as we say in education, multiple modalities, but that would need to have --

MS. BECKER: Say it one more time.

MS. RICKER: Of course: "Is accessible to the family populations in the LEA in multiple formats".

MS. PODZIBA: Kerri, is your comment on this proposal?

MS. BRIGGS: Yes.

MS. PODZIBA: Ok.
MS. BRIGGS: The regulatory language around this -- around the statute, I don't think we need to add another one, especially when -- as my understanding is, these things that are in here, the standard were the things that we say about -- that we say about this parent.

I don't know how something is uniform and then multiple format at the same time.

MS. RICKER: Do you want to make more comments on that?

MS. PODZIBA: Are there other comments on that?

Regina?

MS. GOINGS: I have a question, could you explain what multiple formats, what that would include?

MS. RICKER: Sure. What I'm trying to get to is the cultural responsiveness of a school district, and, you know, the idea that for just putting something, one paragraph in five different languages, and having it on a piece of paper that...
goes home in backpack mail, might not be enough to
get to a family population, where it needs to get
to.

And so, while you may need it in
writing and you may need it orally, and an
opportunity for interaction, or it may need to
also include a format that includes storytelling
as a way of presenting the information, or you may
need to include it in, you know, obviously like
other multiple communication measures, and that
that's part of -- that's what we're trying to get
at, is that you're a culturally responsive
district and you're thinking through, not just
what is easy for you as a district to do, but what
is truly engaging for parents to accept.

MS. PODZIBA: Further discussion.

Rita?

MS. AHRENS: Maybe we could change
"multiple format" to "culturally responsive
format".

MS. RICKER: That would be fine.
That's a better description

MS. PODZIBA: Kerri?

MS. BRIGGS: I wonder why the other things would be practicable able but this one has to be required. It just -- I get it, I get we would get it, but I just think that this is too much.

MS. PODZIBA: Ok, Richard?

MR. POHLMAN: So can I ask, because I think we're also interjecting some terminology that may be a little bit newer for many LEAs in talking through the culturally responsive format, and I think it's really great and it really would encourage me as a school leader to think differently.

However, I think that it would be best to interject these items again, with some guidance that would help us as school leaders to go back to and better understand.

Because once we put it in regulation,

then it becomes a requirement and then also
subject to a number of interpretations that are going to end up in Guidance anyway. So it's just my thought to sort of encourage a consensus also, because I'm hearing things about putting so much in.

MS. PODZIBA: Is there a dissent this on this proposal?

Derrick?

MR. CHAU: I would want to add the "to the extent practicable" as well, because it's so new. We want to add that piece.

MS. PODZIBA: Ok, is that ok.

MS. RICKER: What was it?

MS. PODZIBA: "To the extent practicable".

MS. RICKER: I would understand that historically "to the extent practicable" means by our most marginalized population that they can try and -- I completely understand to help us move on, if this is what it takes, but I think it leaves us in a place where we have an opportunity to scrub
some institutionalized hampering of really robustly meeting the needs of our full population.

MS. PODZIBA: Marcus?

MR. CHEEKS: I'm not sure how practical this is from a state agency standpoint.

It's difficult to -- and I think we mentioned this in some earlier conversations, when you get down to -- in my home state there are two hundred plus languages. Someone is going to run into a problem meeting that letter of the law if there is not "to the extent practicable".

So I just, I think we're going to run into a problem.

MS. PODZIBA: Is there dissent from accepting this proposal?

MR. CHEEKS: Absent the term "to the extent practicable," yes.

MS. PODZIBA: I guess, Mary Cathryn, it sounded like you were begrudgingly accepting.

MS. RICKER: Yeah.

MS. PODZIBA: Ok, so, as written behind
me, is this acceptable? Yes?

MS. PODZIBA: So the proposal is to add
to romanette ii(b), "to the extent practicable,
accessible to the family populations in the LEA in
a culturally responsive format".
Is there any dissent?
Tony.

MR. EVERS: I mean, it's going to be
auditors that kind of respond and figure out
whether this is happening. I'm just not -- I just
think this is a clumsy way of dealing with it
frankly. I mean, we will have to train our
auditors around this issue. It's just a problem.
I mean, I'll be glad to be helpful, but
please consider the practicality of some of these.

MS. PODZIBA: Aaron.

MR. PAYMENT: Culturally responsible--
I've heard the term culturally competent. Is
there a distinction between "responsive" and
"competent"?

MS. RICKER: "Responsive".

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MR. PAYMENT: There is agreement on culturally competence. I'm wondering what is culturally responsive as different from culturally competent.

MS. PODZIBA: Marcus?

MR. CHEEKS: This gets muddier and muddier by the minute. "Culturally responsible" really stands out. "Responsive" really stands out. I know the African-American culture, I would question others knowing that it's clear. This is a slippery slope, the more I think about it, really a slippery slope.

MS. PODZIBA: So here's kind of what I'm sensing is that people are uncomfortable with it.

MS. RICKER: Mm-hmm.

MS. PODZIBA: And I don't know if anybody wants to dissent -- well, I'll just leave it to you all people. I'm just going to call the question.

Is there any dissent on this proposal?
MR. POHLMAN: Yes.

MS. PODZIBA: Yes, ok.

Aaron.

MR. PAYMENT: So I would alternately propose "culturally competent format". That's known, it's understood. There's training on cultural competency, and that is not misunderstood.

MR. CHEEKS: I'm sorry?

MR. PAYMENT: I'm proposing alternately -- we struck down the previous one. I'm proposing "culturally competent format". That is understandable language. If you don't understand it, you could go read it, but that is understood language.

There's training on it. Usually there's a requirement of some litigation that if certain things are not met if you're not culturally competent. It's agreed upon.

MS. PODZIBA: Lisa?

MS. MACK: I understand your point. I
just want to say, the difference between competent
and responsive is one is knowledge, one is action.

MS. RICKER: Oh, yes.

MS. PODZIBA: Do we need to have

further of this, or can a call the question?

Are there any comments that need to be

said?

Marcus?

MR. CHEEKS: You can call on that

question, but the dissenting members, there are

are specific individuals that are capable of

dissenting versus those that are not, correct?

MS. PODZIBA: Right.

MR. CHEEKS: So, only those should be

voiced on the dissent.

MS. PODZIBA: I'm going to call a

question, if you're an alternate--

Rita?

If you've got a green dot, you don't

have the authority to dissent.

Rita.
MS. AHRENS: I just want to make a quick comment on this that I think it's really important in the spirit of promoting equity as well as in the spirit of Title VI, which does require that we provide opportunities -- well that we actually ensure that parents of limited English proficient children -- or limited English proficient parents have rights to meaningfully participate.

And so I think this language comes at a good compromise that does say, to the extent practicable that you can do it, B, culturally competent, then do it.

So I think that's a fair compromise and I would like us to consider that as we vote.

MS. PODZIBA: I'm going to call the question, if that's ok.

Is there any dissent from accepting this proposal?

Eric?

MR. PARKER: Yes. I think the dissent
comes from just the practicality of it and the
implementation based on I guess regulatory
language versus Guidance I think is kind of what
we're looking at. Just looking at how it's grown
in the last ten minutes and how it's, you know --
it's just the feasibility and practicality of it
from the implementation standpoint, I think it's
in question.

MS. PODZIBA: Aaron?

MR. PAYMENT: Ok, so, I'm going to use
an example. So, just on Tuesday night we had two
distinct Councilmembers who were voting against
getting a new public manager in their unit because
they want the current manager to be elevated and
assisted, and they were so set on that that they
were going to vote no against getting a clinic
manager in their district...

Until I took them aside and said I'm
going to let your constituents know that you're
voting against your own unit. And then boom, they
understood.
1 So this is the compromise. "To the
2 extent practicable," I don't like that language at
3 all, because that call for states to make up
4 excuses or whatever. However it is a compromise.
5 Maybe it is better under Guidance, but
6 I think that having been through this and
7 advocating that it be stronger regulations, is
8 this still allows the state to decide whether it's
9 practicable, but it also elevates the concept of
10 cultural competency in that it be done
11 appropriately. We could use the term valid --
12 MS. PODZIBA: In all fairness, I called
13 the question. I think there was dissent. If I
14 have to go back over every dissent --
15 MR. PAYMENT: Oh, I wasn't sure if
16 Eric's comment was after the dissent.
17 MS. PODZIBA: I think he was explaining
18 his reason for dissenting.
19 Is that correct, Eric?
20 MR. PARKER: Yes.
21 MS. PODZIBA: Yeah. So I think we need
to keep going. I don't see cards for any new issues on this issue paper.

The outstanding piece is the definition. And I think the Department wants some time to come back or I think, Delia offered to think about that.

MS. POMPA: I did.

MS. PODZIBA: And possibly offer some discussions and we will come back.

So we're going to move quickly to Issue One. We've seen a lot of this language already, so it shouldn't be -- it shouldn't be that cumbersome.

MR. ROONEY: Fingers crossed.

MS. PODZIBA: And I have been asked to say if we get through this then we will get back to the definition. So let's move forward.

MR. ROONEY: So turning to Issue Paper 1, which the last tile was first and now is the last issue paper, you saw much of this language before. We made a couple changes based on the

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1 conversation and the discussion we had last time.
2 So I'm just going to quickly run through those and
3 then open up for discussion.
4 Under Cl ii, there is now a
5 strike-through in the second sentence. That was
6 actually that one sentence. I think in the
7 discussion last time we talked about how states
8 are going to have a computer-adaptive test. And
9 remember it's something states may have but don't
10 have to have. But if a state chooses to have an
11 adaptive test, that we include information that
12 the assessment needed to provide valid and
13 reliable information. And then I think someone
14 had made a proposal that we make sure it's valid,
15 reliable and fair and then there was discussion
16 about whether that was appropriate or not.
17 We took all of that discussion back and
18 realized that all of that actually seemed
19 unnecessary because the assessments and the
20 adaptive test has to go through the state and peer
21 review requirements under 200.2, which talks about
the technical quality of the assessments,
including that they're valid, fair, reliable, that
they follow the principals of Universal Design For
Learning. All of that applies to all of these
assessments. So it seems duplicative to keep it
here. As a result we shortened this in our
attempt to be brief. So hopefully that makes
sense to all you people.

The other change we made is in the
paragraph right below it, Number 2, where we had a
phrase at the end of the last paragraph, the end
of the last full line that's now struck out, that
said "and any other reports and reports to the
Secretary;" "any other reports and reports to the
Secretary," and someone asked the question about
what that could be and it seemed awfully vague,
and in retrospect we agreed that was a little
vague.

Now instead we reference Section 1111H
in the Act, and that is where the law refers to
all of the state and local reporting requirements
under ESSA.

So, we just tried to be clear that

those are the reports that were meant and that is

what we're referring to.

And then the third change, from what

you saw before, shows up on Page 3 of the issue

paper. It shows up here together. I think I

mentioned this yesterday, but as part of our

reorganization after the discussion, we realized

we should break this into the sections where it

makes sense.

So computer-adaptive tests are

permitted for states, among all assessments, among

general assessments, and so for that the text you

see on Page 2 would show up in 200.2 of the full

package.

And then the law also allows for an

adaptive alternate assessment and an adaptive ELP

assessment, and rather than include them here in

200.2, we actually moved them to where we talk

about the requirements for alternate assessments
in 200.6C and the requirements for alternate
assessments for ELP assessments in 200.6 (f)(3).

So this language, which is pulling out
what's in the statute for computer-adaptive
alternate assessments and computer-adaptive ELP
assessments separately, will then be placed in the
regulations in the full package where we talked
about those assessments.

So we didn't make any substantive
changes to them. We just put them in the spot
where it actually made more sense for them to be.

So I'm going to stop. That's my
presentation. It's open to discussion.

MS. PODZIBA: Ok, so everything's open
and we will just do it the way we were doing the
last one.

Delia.

MS. POMPA: Patrick, earlier you
mentioned that across all ability levels was in
200.2. Could you show me where it is? I couldn't
find it.
MR. ROONEY: So you're asking a
question that's not about the adaptive test.
You're asking a question about acceptance in
general?

MS. POMPA: No, it's related.

MR. ROONEY: We don't use those exact
words. I think we talk about the test being valid
and reliable for all students. That would include
making sure that it is an accurate measure of what
students normally do and that they have multiple
achievement levels, as required by the law.

MS. POMPA: So it's not explicit.

MR. ROONEY: Right, it doesn't use the
language about disability levels. That doesn't
show up in the language.

MS. POMPA: Thank you.

MS. POMPA: Other questions, comments,
revisions on this issue paper?

MS. RICKER: I have a question.

MS. PODZIBA: Ok.

MS. RICKER: Patrick, I think my
1 question is for you. Is there any place other
2 than that this where there is a reference that
3 assures computer-adaptive assessments or tests
4 will not be given unless there is adequate
5 technology? Or is there any way to put it after
6 the state has determined it has technology
7 adequate to handle a whole state of students?
8
9 MR. ROONEY: That's a good question,
10 Mary Cathryn. I think you may have asked that
11 question and a few others asked that in the last
12 session.
13
14 We didn't change that in the
15 regulations. I think we struggled with thinking
16 of how to put that in and whether that's the kind
17 of thing that belongs in regulations versus the
18 kind of thing that is guidance to the state as
19 they're thinking about moving to a
20 computer-adaptive test to make sure that they have
21 an assessment that can be administered statewide
22 and that is accessible to all students.
23
24 But it's not here. I think we
struggled with what would be a reasonable way to put it in regulations versus Guidance for state
with a development assessment that they need to make sure that they're providing support to districts to support the administration of the test they're giving.

MS. RICKER: I'd appreciate that, because that's something that can move forward on. It is a real accessibility issue, when you log on and you get the spinning wheel of death, and then in the school you log off, and then they have an announcement that says, Everyone is now testing. Would you please not use the Internet because the bandwidth is restricted, and you log off, and you log back on and now you're on question five instead of question eight.

I really appreciate that you are thinking of where to address that, because I completely understand, we're going to keep creating tests like this, but it is stressing systems that are already completely stressed. And
to say we struggle to keep up is downplaying it.

So thank you.

MS. PODZIBA: Audrey?

MS. JACKSON: I just second that, and will keep it really brief, but I love that you're thinking about it in guidance areas, and I think that states will be motivated, hopefully, to consider it, because their students will perform better, but to also include access to the testing window, so it's over cured.

MR. ROONEY: I would say that this is a larger issue than computer-adaptive tests, because a lot of states have computer-based tests that they administer that are not adaptive. This is not something that you just want the states thinking about as an adaptive test. They should be thinking about it as they are developing a computer-adaptive assessment.

MS. RICKER: That is a great clarification. Thank you.

MS. PODZIBA: Anything else on this
issue paper?

Is there any dissent from adopting a tentative agreement on Issue One?

Congratulations. That's true progress.

We've been making progress all day.

So, Patrick, do you want to go to Issue 6, or do you want to go to the definition?

MR. ROONEY: Let's go to the definition if it's okay. If people feel like they have had time to consult with their colleagues around the table and they have had some discussion is my guess is we'll have some comments on the discussion and getting a sense of the room how people are dealing with it and how it would be helpful.

MS. PODZIBA: This is the handout from this morning. It's all red, half a page, starts with the term "students with the most significant cognitive disabilities".

And Patrick presented it this morning, so I'll just open the floor for discussion.
Tony?

MR. EVERS: I hate to go back to this, but we have -- the federal government hasn't been able to find this for several years. The committee was unable, maybe because of time, was unable to come to terms with this. I believe that it is best left to the state. I actually consulted with our special ed folks back in Madison, but they believe this definition will actually expand the number of children that are identified.

So I would prefer to leave this to the state. My preference would be not to accept this.

MS. PODZIBA: Lisa?

MS. MACK: My concern is that this appears in basically every discussion we've had this week, and again one of the things that I brought up to the subcommittee is that there is an issue of portability going from state to state, what does this exactly mean. It's something that's defined by the IEP team as understood. A
parent is a part of that team, but as we go from
school district to school district, state to
state, it could be somewhat subjective. I think
it needs to be refined.

And I feel as if this definition is kind of a compromise to what we have discussed.
It allows flexibility to the schools and the states under the ideas that we have discussed thus far and provides clarity for families as well.

MS. PODZIBA: Alvin.
MR. WILBANKS: I would just concur as Tony mentioned that we not accept the proposal.
MS. PODZIBA: Regina?
MS. GOINGS: I agree it does vary from state to state. Each state has its own interpretation of what is significant in terms of adaptive behavior and education. It's just a component that helps to define statewide what students -- that's a hard term to wrap your head around, because what's significant in one state is not significant in another state.
MS. PODZIBA: Marcus.

MR. HAGER: If I'm reading this correct, is the definition coming from IDEA?

MR. ROONEY: No, this is not defined in IDEA. This is our proposal of -- it's referenced in a subset of children with disabilities as defined under the IDEA. So this is the student with the most significance cognitive disabilities has to be a subset of all children with disabilities.

So you couldn't pick -- a child with the 504 plan would not qualify under this definition, unless they were also defined as a child with disability under 200.6C of the IDEA.

MR. CHEEKS: IDEA does not define this term, but our interest would be to define it under title in the ESSA?

MR. ROONEY: Yes. I think our rational for proposing this definition is that this term appears only with the students then who are assessed gets an alternate assessment.
So, because that is an assessment requirement that states have an alternate assessment aligned with the alternate achievement standards for students with the most significant cognitive disabilities, that providing some guidance for the field about what constitutes a student with the most significant cognitive disabilities would help states in implementing the law, notwithstanding Tony's comments and others.

If we don't define it, Tony's point, states will all individually have to come up with a definition, which is how they have been operationalizing this prior to now, or currently.

MS. PODZIBA: Lynn?

MS. GOSS: While I agree that we don't need to actually define it, if we have to do anything, there is no reference here to the IEP team. So, I think that we just need to be cognizant of that, and because they go through all of their testing to qualify and if we don't include the IEP team, then it's even more
subjective.

MS. PODZIBA: Liz?

MS. KING: Yeah, I will just say as a
general principal, which I do realize this is a
very high priority. The inclusion of this is a
very high priority for our civil rights
constituency.

It would be helpful to hear, for the
sake of the conversation, and in general I think
as we're comfortable with this, there may be
tweaks we would make, it may be helpful to hear --
also one backup. This is not an IPA because the
children with the most significant cognitive
disabilities in the ESSA term, but it wouldn't be
ESSA, which is why there would be and should be a
definition in the regulation, criteria in the
regulation relative to this law, because it
matters not for the sake of the services provided
to individual children under IDEA but for the sake
of the one-percent cap and the way that assessment
and accountability work under ESSA.
1 So I think that's an explanation for
2 that.
3 But it would be really helpful to hear
4 from both Tony and Alvin that there is a
5 definition, or if we believe we can identify a
6 definition sort of what other things would need to
7 happen to these words to make it something that
8 you could work with. I think it would be helpful
9 to hear more on that.
10 MS. PODZIBA: So, Liz, I'm going to get
11 everyone else in and then see if Tony and Alvin
12 would like to answer that question.
13 Audrey.
14 MS. JACKSON: I don't know if this is
15 the time to make a proposal. I'll just throw the
16 idea out. I wonder if -- just throwing the
17 idea out that the things that would really matter
18 to me would be the romanette i and ii, so,
19 basically that the states would still be free to
20 define what it is under their own terms, but that
21 there is some federal guidance on what you could
1 not do.
2 So you could not just say, if you are
3 diagnosed with X, that definitively means you are
4 one thing. Those are the protections that I think
5 are really essential. But the actual positive
6 criteria would be something that states could
7 determine on their own.
8 MS. PODZIBA: So is that, are you --
9 MS. JACKSON: I don't know exactly how
10 it would work. I guess that's a proposal. I'm
11 not sure how that would work. I guess my proposal
12 is, if it would not be a definition but
13 Guidance -- guidance is probably the wrong word.
14 MR. HAGER: You could use criteria.
15 MS. JACKSON: Criteria for what it
16 could not be --.
17 MS. RICKER: Striking one.
18 MS. JACKSON: Striking one and two
19 romanette -- I don't know the --
20 MS. PODZIBA: Let's get some help from
21 Kay on that.
MR. ROONEY: I think the question would be whether you say in defining kids with the most significant cognitive disabilities, "the state may not base it solely on," or something like that. I think that's your proposal?

MS. JACKSON: Yes, that's my proposal.

MR. ROONEY: I think you said it more eloquently than I did.

MS. PODZIBA: Ok, so that's a proposal.

I think there are some people that want to get a first comment in. Let's get their first comments and then we'll come back to your proposal.

Lisa?

MS. MACK: Again I would be satisfied with criteria and not sure if listing what it is not would be satisfactory. But I did want to reference the non-regulatory Guidance that was in No Child Left Behind. I believe that was the only place where it was sort of defined as the number of students within one or more existing categories.
of disability under the IDEA, and gives examples of autism, multiple disabilities, traumatic brain injury, et cetera, and those whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.

Again, there needs to be some kind of framework, and again I'm concerned about portability or even issues with general education where you have military families that are moving from state to state and some children are having to stay behind because they are not eligible to graduate in the state that their families has moved to, how much more so if we have this situation that is defined differently from state to state.

Ultimately it has ramifications of the type of diploma they get and that kind of thing. So I would like to see it at least with some kind of criteria.

MS. PODZIBA: Ok, so now we have two
proposals on the table.

Again, I'm going to take the comments.

I've got Ron, Rita, Aaron, Mary Cathryn and Kay.

And then we will take up Regina.

Lynn I think your card is still up from before, right?

MS. GOSS: Yes.

MS. PODZIBA: I'm going to take those commentators. Liz, you're slipping in there, and then we will take up the proposals.

Ron.

MR. HAGER: You know, going back to the criteria -- not the criteria, but the principals that the subcommittee came up with, I want to definitely restate that this is very important to us and we do feel that we need this full range of criteria, which is a compromise from what we had been hoping to see, if you will.

But if you look at this language in this proposal, and you look at the operating principals that the subcommittee came up with, I
think this does a good job of balancing that they
have the goal is to ensure that students who
should take the alternative assessment do take it,
and those who should thought take it do not, that
there are -- many states are accomplishing this
goal, but there are those that do not, which is
the idea of having this national consistent
standard that is a minimum floor, if you will.
Obviously a state that is -- twenty-nine states
have the full DLN or NCST criteria. Nothing would
prevent them from maintaining that. So Wisconsin,
Iowa already are using much more extensive
criteria than this.

So by having this definition, we never
preclude a state from having more protection. So
the fact that this floor is here, and you already
may to be doing more in your state and continue to
do more. For those states that are not, this
would be bringing those states up to at least a
minimal floor.

So that I think really is accomplishing
that, that second bullet point there, trying to accommodate, you know, the constraints on states.

And lastly, the IP team point that I think it was Lynn made, this fits within the whole structure of 200.6C where the IEP team is referred to. So this is really giving guidance to the IEP team, and they do that. I mean, if you look at -- there's other places where the IEP team has specific guidelines that they must follow, which the bullet point number three, so this would be one more example of some guidance to help the IEP team. Because the goal here is to make sure that we keep within the one-percent statewide criteria, so we have to have some framework within which to work.

MS. PODZIBA: Rita?

MS. AHRENS: I want to support what Lisa said and proposed, and also note that this is the first time that this term has appeared in the statute, even though it's appeared in regulations, because it's now in ESSA, I do feel it needs to
have that regulation, and that's partly as a safeguard to ensure equity for our students.

The parents that I work with typically are refugee immigrant parents of limited English proficiency in a lot of cases, and they have a huge amount of confusion over what this term means. A lot of them do move. And so to have the definition differ from state to state is problematic.

Also, I think having the criteria in place, in a broad sense, as Ron said, with safeguards, is very important, because I think that's the federal purpose of these regulations is to provide some safeguards, to ensure that equity is being ensured, and I just want to reiterate again, you know, especially for limited English proficient parents, we have seen a huge amount of misidentification.

Even though the two frameworks that most states use prohibits classifying students who are English language learners with disabilities as
being in the most severe cognitive disability category, it is happening. It is happening.

There are complaints that have been filed with OCR that are still outstanding on this very issue for this population, and I think having a definition in place would help reduce and diminish the amount of complaints that we have.

MS. PODZIBA: Aaron?

MR. PAYMENT: So I'm trying to figure out why the opposition and so I'm trying to figure out the lay of the land of this, and it puzzles me.

It makes sense to me to define it from a person who has experienced a child who has been denied services. So, it seems to me that it makes more sense to include it.

So if it's administered ad hoc, it seems to make sense to have it defined so that it gets past those hurdles at the local level and all the comments at the local level. So it seems to make sense to have it as defined in the law so we
1 can past it, not have to encourage fighting for it
2 and trying to advocate for certain populations to
3 have appropriate assessment.
4 So, I guess I don't really understand
5 where the opposition is coming from, but I'm
6 wondering if there is some point of convergence or
7 compromise in terms of having states define it
8 under a timeline.
9 So, rather than leave it like states
10 may define it or leave it up to the benevolence of
11 states to define it, instead prescriptive to
12 states define it so we would expect the state
13 authority to define it, but we want to define it
14 because of a certain timeframe.
15 MS. PODZIBA: Mary Cathryn.
16 MS. RICKER: I actually had some
17 questions specifically about the phrase that came
18 up earlier, "extensive direct individualized
19 instruction," and I'm getting hung up certainly on
20 the term "direct instruction" that is imbedded in
21 that, and like what that specifically means to me
as a teacher.

And so, I have a few questions about that, but why don't I just start with, what does that mean to you as you put it in here?

MS. PODZIBA: Patrick.

MR. ROONEY: I'm not sure. Can I get a clarification from a colleague and then try to answer that?

MS. RICKER: I'll do a Public Service Announcement while he's doing that, because of this buzzing, it's really hard to hear. Let's speak as directly and loudly into the mic so we can keep capturing everything in the back.

MR. ROONEY: So I'll tell you where we got this language from in the absence of totally defining what it means. If you look at the end at Issue Paper 4A, and I mentioned when I introduced this that a lot of this came from the participation guidelines that the two groups of states that have designed new alternate assessments came up with. So there is...
supplemental material behind the issue papers that includes the administration guidelines from Dynamic Learning Maps and the National Center of State Collaborative, NCST, and those two groups of states which together encompass about twenty-nine or thirty states, came together to come up with common solution guidelines that they could agree to. You see two sets of solution guidelines on the pages, and both of them talk about, in the little table, that is mostly identical between the two pages, if not identical. I'm trying to look quickly to see if it's its what I think it is, that talks about the three different criteria that would be -- that you would walk through at the usual student level to decide whether the student should take an alternate assessment. And if you answer yes to all three, then the student would qualify for the alternate assessment. If you look at the third one, it's talking about "the student requires extensive
direct individualized instruction and substantial supports".

That is the language where that came from. This may be a question where we actually might want to call on Martha Thurlow, our expert, to provide a little support, she might be able to do that. I don't want to put her on notice.

MS. RICKER: I can follow up.

MS. PODZIBA: Sure.

MS. RICKER: So my follow-up, because that came explicitly from that, will that mean that this can be subject to interpretation or is this actually setting a new standard -- a new uniform standard?

MR. ROONEY: I'm sorry, Mary Cathryn, could you repeat that?

MS. RICKER: Sure. Because this came from that explicitly, does that mean that it will be subject -- it could still be subject to interpretation, or is this a new uniformed standard?
MR. ROONEY: So I would say that we tried to in this proposed definition for the group's consideration not to be overly prescriptive in a definition but to create what I would describe as in broad way, kind of how states would operationalize this. But there actually would be a fair bit of work that states would do when they operationalize this and using them to make decisions, however brief, to their students. I don't read this definition and I don't think we intended it to be very prescriptive at all. I think it was kind of creating a broad framework for that to be done. I don't know that we would do that, to your point, Cathryn, that in my working understanding of what our language would be, how it would be implemented.

MS. RICKER: Did you talk at all about what the potential impact on classroom instruction would be in having a phrase like that?

MR. ROONEY: Sorry, could you repeat
MS. RICKER: As you were drafting this, did you talk at all about or explore what the potential impact on classroom instruction would be in having a phrase like that in it?

MR. ROONEY: And this may be a point where I think it would be helpful to have Martha come up. But I think her opinion on what this is might be relevant, if you have time and that makes sense. I'm happy to have her come up.

MS. PODZIBA: Could I just ask someone from the Department get me the public comment list. Thanks.

MS. THURLOW: Ok. Let me have the phrase in front of me. "Extensive direct individualized instruction," you know, if I had a little more time I probably would have dug back into some of the writing of Diane Broader and others who really have worked with the population over time.
But as you work with students with
significant cognitive disabilities rarely, but
that's not totally -- I'm saying this backwards.
Most often it's very much
individualized. It's less often some kind of
group work. Not to say there isn't group work,
but it's very much individualized to the students'
you disability characteristics, the extent of
their intellectual functioning, the extent of
their motor involvement.
So, it's not to say it's not
individualized for other students, but all those
three together very much present a picture of the
instruction that is very much often one to one or
two instructors, you know a teacher and a
paraprofessional working with an individual
student.
I don't know if that helps. But it's a
beginning, and I believe I certainly could find
some more specific language in some of the
researchers who work on the instruction.
MS. PODZIBA: Thank you.

Regina.

MS. GOINGS: Just to add to that,
speech language pathologists provide direct and
indirect services; direct meaning it could be two
or three students together or in a classroom where
they're targeting the goal of one student.

So the services that they provide,
although all of them benefit, they are actually
providing direct services. They're only
identifying one student in the services.

So hopefully that would help clarify
that.

MS. RICKER: It does. And this gets to
us, as Aaron talks about trying to distill what
objections that lead to this.

My concern is that, understanding that
it is meant to exclude as many students as
possible, and that's halting the success.

So I really appreciate the various
clarifications.
MS. GOINGS: May I make another comment?

MS. PODZIBA: Yes, you were up.

MS. GOINGS: I just wanted to clarify too teams. There are two teams when you are dealing with IEPs. First is the eligibility team. Those are the ones who identify the disability. And that can consist of, not always limited to, the IEP team.

The IEP team is the team that actually developed the program or the plan for the accommodations.

So I just didn't want everyone to confuse the two. Eligibility team defines and identifies a disability and the IEP team develops the program.

MS. PODZIBA: Thank you.

Liz.

MS. KING: Yeah, I wanted to sort of say that to Audrey's proposal, I am not comfortable with only having a list of the
1 exclusions, although I understand why. I think we've heard in this conversation some comments that sort of suggested an speculation that low income children or refugee children, children of color, immigrant children facing other challenges will be more likely to be classified as children with the most significant cognitive disabilities, which did give me pause and made me nervous, because those are not those criteria.

So I understand the desire for having that kind of list. I think we need to an affirmative list of what the characteristics of these children should be in order for this to be the most useful and the most helpful.

I think to the instructional point that Mary Cathryn was making, there is also a requirement in the statute that those children included in the alternate assessment be included the in the general classroom and make every effort and consistent with IDEA, and good instructional practice and all of that, making sure that
children are included as much as possible. I think that specifically thinking about the individualized instruction component of this, and these criteria are very much about identifying individual children and being as clear as possible for those professionals, for those educators closest to the child making the decision about whether this child with a significant disability or a with a cognitive disability is really appropriate for the alternate assessment.

It is very much about being very clear that we are only talking about those children for whom -- for who have a very significant, most significant cognitive disability.

So I would not want the goal of this to be to exclude as many children as possible. I would want to exclude every single noneligible child and not one child more. And I think this is sort of the value of having both the statutory one-percent cap as well as the regulatory definition is that the one-percent cap works at
the state level, and obviously has implications at
the LEA and school level.

But this definition is at the child
level, and this is among those children in your
building who have IEP's, which of them should be
taking the alternate assessment, which of them
have the most significant cognitive disabilities.
So I think both of them are incredibly
important for making sure the appropriate children
are taking the appropriate assessment, but they
serve different purposes, and I think that's why
we need both of them. And I think that
one-percent cap being included in the law points
to having this definition in the regulation.

MS. PODZIBA: Tony or Alvin, I want to
give you an opportunity answer. Is there
something in particular about this language, or is
there -- or is it more general than that?
I'm particularly curious about how this
might have the opposite of the desired affect that
we were responding to Tony.
Alvin?

MR. WILBANKS: For me it is general.

Special education is one of the most regulated programs we have. But I also think it's a program that has some of our best trained and most effective teachers, and I believe they do a great job doing -- I won't repeat what Regina said. It was very much on board. But you have those teachers who know them best, who know those and can account for those individualized disabilities that they have. I believe those are best to make that determination, and I think to try to define it could have either one -- we could have less being put in or it could have more.

I'm not really concerned. I think Tony asked at the state level, they have the one-percent cap, and while the statute says you can't put a cap on the district, I'm certainly concerned with that. How can the state make a cap if we're not concerned about it.

But what I'll really concerned about is
if the child needs this, that they get. And I believe the best people to do that and special ed people that use as a team approach general staff, special ed staff, parent, and I think they're the ones best -- in the best position to make this determination.

So that's just one object. I mean, anything -- and I understand we're trying to make this a statute of this law much more easier as we implement it, but I just don't see this being -- that here and I think just adds another regulation to already a highly meticulous and procedural program for our students.

MS. PODZIBA: Thank you.

Tony?

MR. EVERS: My concerns are both general and specific.

Specific ones I will tell you come from staff back in Madison who are with us today to testify.

For the general ones I will repeat once
again, federal government hasn't been able to
define this in a couple of years. The committee,
yes, they came up with some global statements, and
so I just think we're not in a position to adopt a
definition. And my staff said they felt that the
definition as proposed would increase the number,
which I support they're recommendation.
    I will say that the guardrails and in
romanette, I learned a new word, I thought that
was a concept. Anyway, they thought those were
inappropriate.

    MS. PODZIBA: Ok, so we have five
minutes, and we have two proposals and my hunch is
that that's where we'll start with when we come
back to this issue. However, there are a couple
of things to attend to.

    And no one signed up for public
comment. Is there anyone in the audience who
would like to address the committee at this time?.

    Ok, I also know that Derrick would like
to propose a subcommittee. So I'm going to give
Derrick a couple of minutes to explain that and then have the committee decide whether or not it wants to authorize that subcommittee.

MR. CHAU: In response to our discussion yesterday regarding dual emersion programs, it's come to my attention and the attention of quite a few other committee members, that we have a growing number of dual emersion schools that are required under the federal requirements to administer assessments in English primarily, even though these are students whose primary language of instruction is not English.

And so, what I'd like to propose is a subcommittee that would also include Kenji as an expert advisor to investigate and develop a proposal for how to address assessments for dual emersion for dual emersion schools and to determine where that might fit into the regulations.

MS. PODZIBA: Ok. Any questions about that subcommittee. We can also come back to it.
1 Tom?

Are there any questions for Derrick before you have those conversations?

Liz?

MS. KING: Can I just flag as a member of a former subcommittee, it's important to remember what you are fully entitled to talk to whoever you want whenever you want, so I will say that my experience of the subcommittee, I found it a little bit limiting because of the process, just as a piece of advice from one, and since I expect to join your subcommittee if you form it, and that's all.

MR. CHAU: Thank you.

MS. PODZIBA: Mary Cathryn.

MS. RICKER: Would this also include the discussion of one-way emersion schools?

MR. CHAU: I think we would be open to that. We would be looking at other connections with other regulations out there to define schools that would fall under this and to develop the
regulatory language to allow for exceptions to the assessments.

MS. PODZIBA: Kay?

MS. RIGLING: I don't want to do anything to chill the discussion. I just want to put in a reservation that there may be a legal objection to whether we can actually do this through regulation.

So I just want to put that out there to that we're up front with that.

MS. PODZIBA: Alvin?

MR. ROONEY: The point in the statute, there is no point in the statute that I can point to that says this fits in with something in the statute, that you clearly would be waiving something in the statute in order to permit it.

I think that's where the challenge comes.

MS. RIGLING: Right, exactly. I think that's well said.

MS. PODZIBA: Alvin.
MR. WILBANKS: I just want to make one other report on the definition, and my colleague reminded me of this.

IDEA requires that you make individualized decisions. I understand that if you have a definition you still go through a process. But if you have a definition and somebody sort of misinterprets that definition and parents go into thinking they're going to get this... I don't know how many of you are from the practitioner level. We see the challenges all the time. And I think this would just increase that. I'm not saying that we should make a decision for a separate clause or limitations, but on the other hand, when you don't know want to tie up the process of educating kids to the highest level possible and giving them the best that we can with our instruction program, on whatever level we can.

So that's again a reason why I just think a definition in all fairness to everybody's
opinion, is not something that should be --

MS. PODZIBA: Ok, we'll surely come back to that question.

Ron, did you have one more comment on the subcommittee?

MR. HAGER: Yeah, I was just going to reaffirm Kay's point. I think it's well beyond the statute, you can't do in a regulation what you're unable to do it's not allowed in the statute. That's our concern.

MS. PODZIBA: Patrick, do you want to -- I think everybody's probably ready to go.

Do you want to just tell us what to expect tomorrow morning?

MR. ROONEY: Yes. So we are pretty much through all the assessment pieces. I will recognize that we didn't get through some or all of the issue papers, but I know you're all excited and ready for the supplement not supplant conversations, so we will start with that tomorrow morning when everybody's fresh and ready to talk.
about that.

So that will be first on the list and then after that we will try to come back and look at the full package and there's a few things we didn't talk about in the issue papers that we want to flag for you, and we could try to come back with some of the issue papers that have some suggestions or responses as to the questions that are outstanding. I can't promise right now which ones those will be, so we can do that teaser and hopefully we will have enough time.

MS. PODZIBA: Thank you, everyone for a real good hard day's work. I appreciate the focus and effort. See you tomorrow morning at 9:00.

(Whereupon at 5:00 p.m. the Negotiated Rulemaking Committee meeting was adjourned until Friday, April 8, 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
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Audrey's 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.
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Statements made during negotiated rulemaking.

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